Supreme Court, U. S.
FILED
MAY 5 1980
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1752

JANICE ADAMS and JACK ADAMS, JR., Minors, by JERRIANNE ADAMS, their Natural Guardian and Next Friend, and JERRIANNE ADAMS; CATHERINE N. NEEL and CAMILLE A. NEEL, Minors, by CATHERINE NEEL, their Natural Guardian and Next Friend, and CATHERINE NEEL; MARY EDDINGTON and SUSAN EDDINGTON, Minors, by HORACE EDDINGTON, their Natural Guardian and Next Friend, and HORACE EDDINGTON,

Petitioners,

vs.

UNITED STATES OF AMERICA,

and

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, DANIEL L. SCHLAFLY, FREDERICK E. BUSSE, GORDON L. BENSON, MALCOLM W. MARTIN, ANITA L. BOND, JOYCE BOWEN, HENRY M. GRICH, JR., JAMES L. CUMMINGS, ERMA J. LAWRENCE, DONALD E. MAYER, LAWRENCE MOSER, CHARLES HARRIS, JULIUS C. DIX, BENJAMIN M. PRICE, ROBERT W. BERNTHAL, DAVID J. MAHAN, CHARLES BRASFIELD, and ROBERT E. WENTZ,

Respondents.

PETITION FOR WRIT OF CERTIORARI
To The United States Court of Appeals
for the Eighth Circuit

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Respondents.

PETITION FOR WRIT OF CERTIORARI
To The United States Court of Appeals
for the Eighth Circuit

The Petitioners, Janice Adams, et al., pray that a Writ of Certiorari issue to review the judgment and opinions of the United States Court of Appeals for the Eighth Circuit entered on March 3, 1980 reversing in part and affirming in part the judgment of the United States District Court for the Eastern District of Missouri entered on April 12, 1979.

OPINIONS BELOW

The Opinion of the District Court is reported at 469 F.Supp. 1304 (E.D. Mo., 1979) and is printed in Appendix 6. The Opinion of the Court of Appeals is as yet unreported, but is printed in Appendix 7.

JURISDICTION

The judgment and mandate of the Court of Appeals was filed on March 3, 1980. The

jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254(1) which provides:

> "Cases in the Courts of Appeal may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

QUESTIONS PRESENTED

1. Whether the Court of Appeals properly adopted a new test to determine the effectiveness of a voluntary desegregation plan by comparing the number of de jure segregated schools prior to 1954 to the number of schools which were more than 85% one race in 1962 and by requiring a minimum number or percentage of students in both races in each school building.

2. Whether the Court of Appeals can order a desegregation plan limited to a single school district after making a specific finding of interdistrict collaboration to insure the maintenance of segregated schools.

3. Whether the Court of Appeals can attribute segregative actions of third parties, including the United States of America, to the Board of Education.

4. Whether the Court can consider post trial extrajudicial documents to determine whether Federal discrimination has irrevocably ceased.

5. Whether the Court of Appeals can award attorneys' fees when none were asked.

6. Whether the Court of Appeals can deny attorneys' fees to the prevailing party under the Civil Rights Attorneys' Fees Awards Act of 1976.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. First Amendment to the United States Constitution. (Full text reprinted in Appendix 1.)

B. Fourteenth Amendment to the United States Constitution, Sections 1 and 5. (Full text reprinted in Appendix 1.)

C. United States Code, Title 20. (Full texts reprinted in Appendix 1.)

§1601

§1618

§1651

§1652

§1654

§1656

§1704

§1705

§1706

D. United States Code, Title 42. (Full texts reprinted in Appendix 1.)

§1981

§1983

§1985

§1988

§2000C

§2000C-8

§2000C-9

E. Missouri Constitution, Article IX, Section 1(a). (Full text reprinted in Appendix 1.)

STATEMENT OF THE CASE

A. NATURE OF CASE.

This matter arises from a decision of the Eighth Circuit Court of Appeals, filed on March 3, 1980, reversing, in part, the decision of the United States District Court for the Eastern District of Missouri entered on April 12, 1979. Your Petitioners originally intervened in the District Court on the basis that the original Plaintiffs were not adequately representing the interests of these Plaintiffs in a class action filed in 1972. A Cross-Complaint in Intervention was then filed against the Defendants, Board of Education of the City of St. Louis, and its members and certain officers, as well as the United States of America, seeking a declaratory judgment that requirements for admission to certain schools operated by the Board of Education with Federal funds discriminated against white parochial students on the basis of their race and religion, that the school assignment policy was contrary to Federal statutes, and seeking attorneys' fees.

B. COURSE OF PROCEEDINGS.

The cause was originally filed in the United States District Court for the

Eastern District of Missouri in 1972 by a group of individuals headed by Craton Liddell and others, seeking a declaratory judgment that the then Defendants, Board of Education of the City of St. Louis, the Board members, and the officers of the Board of Education were operating a de jure discriminatory school system. On December 24, 1975, after discovery and negotiations, a Consent Judgment was entered into between the original Plaintiffs and the Defendants. Janice Adams, et al. successfully sought to intervene, alleging lack of adequate representation. The United States of America, which by that time had also intervened as a party Plaintiff, was then named along with the School Board Defendants as a Cross-Complaint Defendant in the Complaint in Intervention filed by your Petitioners on August 12, 1977. The Cross-Complaint sought a declaratory judgment that admission criteria to certain schools operated by Defendant, Board of Education, and funded by Defendant, United States, were unconstitutional and illegal. Complaint was also made that, because the St. Louis Public Schools had been constitutionally desegregated in 1954, the student assignment and transportation policies of the Board, which policies were imposed by the United States as a condition for the Board to receive financial assistance, were unconstitutional and illegal. The Defendant, United States of America, chose not to file a responsive pleading to the Cross-Complaint, while the Defendants, Board of Education, its members and officers, responded on October 4, 1977. The original Complaint, Complaints in Intervention, and the Cross-Complaint were consolidated for trial. After thirteen (13) weeks of trial and briefing, the case was submitted to the United States District Court.

C. DISPOSITION IN COURT BELOW.

On April 12, 1979, a judgment was entered by the United States District Court for the Eastern District of Missouri, which, amongst other things, denied the prayer of these Appellants, Adams, et al., concluding that the Cross-Complaint was moot. The Court also denied the prayer for attorneys' fees and costs. The Court also ordered the Defendant, Board of Education, its members and officers, to continue to implement the provisions of a Consent Decree approved by the Court in 1975, but specifically found, against the original Plaintiffs, that there had been no de jure racial segregation or segregative intent on the part of any of the School Board Defendants and that the school system of the City of St. Louis had been desegregated by action of the Board of Education in 1954 and 1955.

After separate appeal to the Eighth Circuit Court of Appeals by all Plaintiffs, the Court of Appeals ruled that the 1954-55 voluntary desegregation perpetuated the pre-1954 segregated school system and that the dual school system had been maintained and strengthened subsequently. The Court of Appeals additionally found that the St. Louis suburban school districts collaborated with each other and with the City of St. Louis to insure the maintenance of segregated schools. Further the Court of Appeals ruled that the original Plaintiffs be awarded attorneys' fees, but your Petitioners not, and that although Plaintiff Intervenors, NAACP, had not asked for attorneys' fees, it should receive them. The Court, lastly, affirmed the District Court's finding that the issues of racial and religious discrimination practiced by the United States and the Board of Education

and the illegal assignment and transportation policies were moot.

D. STATEMENT OF FACTS.

Prior to 1954, the Missouri Constitution required that "separate schools shall be provided for white and colored children, except in cases otherwise provided for by law."

In 1954, the St. Louis Board of Education, in anticipation of Brown vs. Board of Education, 347 U.S. 483 (1954), began preparation of its desegregation plan. In its multi-stage plan, it consolidated the separate teacher colleges and schools for handicapped children into one school. The two racially separate teachers' colleges were merged into one, with all students attending the same school. The special education schools for the physically handicapped students were similarly merged into a single school. The plan provided for the desegregation of elementary and secondary schools by dividing the City into attendance zones. The zones for each school were drawn using building capacity, population, and distance from the school. The individuals who drew the attendance zones were supplied with data only as to the number of children living on each City block who were then attending the public schools in St. Louis City. No data as to name, age, race, or sex was used or supplied. Each block was represented by a card which contained the number of children by grade who lived on the block and who attended a public school in St. Louis. The new attendance zones were approved by the Board and implemented with the beginning of the following semester of school. The only exception to the plan was that students could continue to attend their former schools, if different

from the school in their new zone, but only if there was sufficient available space in the former school. Any student not attending his neighborhood school had to provide his own transportation. Students starting in the St. Louis Public Schools for the first time and students attending high schools after graduating from elementary school were required to attend the neighborhood elementary or secondary school.

All reference to the race of the children was obliterated from all school records to avoid any possibility of administrative chicanery. Examination of demographic data for the period indicates that most previously segregated schools attained various degrees of racially mixed student bodies. After the implementation of the plan, there were a very few schools that were one race schools. An informal poll of parents as to the schools they preferred their children to attend, if they were given a choice, indicated that of the 83 formerly white elementary schools, 37 of them would have black students ranging from 56% to less than 1% enrolled. Similarly parental preferences indicated that 13 of the 40 formerly black elementary schools would have white students ranging from 18% to less than 1% enrolled. As the school year progressed, more and more parents changed their preference towards attending their neighborhood school. The result was that more than 2/3 of elementary school children were attending racially mixed schools. Of the seven formerly white high schools, six had racially mixed student bodies immediately after the plan was implemented. As students graduated from grade school, they were required to attend the high school in whose zone they lived, which resulted in a higher degree of racial mixture in the high schools.

According to the 1950 Census, of the 155,460 school age children living in St. Louis, 121,460, or 78%, were white, while 34,000, or 22%, were black. In 1953, however, only 58,595 white children and 30,880 black children were attending the St. Louis Public Schools. By 1960 the total number of school age children living in St. Louis had risen to 203,453, of which 143,357 (70.5%) were white and 60,096 (29.5%) were black. In 1962, the Board of Education again began to keep track of the race of its students. Their records disclosed that of its 108,245 students 48,277 (44.6%) were white while 59,968 (55.4%) were black. Census data and School Board statistics disclose the fact that historically proportionately more black students attend St. Louis Public Schools than their white counterparts.

Between 1950 and 1960, St. Louis experienced a population loss of 227,857 whites moving out of the City, while a total of 20,474 blacks moved in. Of the 667,873 persons over the age of 5 years living in St. Louis in 1960, 340,652, more than one-half, had moved at least once since 1955. A portion of the population movement was caused by urban renewal projects, construction of low income housing projects, and interstate highway construction.

By August 1963, because of the population shifts in the metropolitan St. Louis area, a number of City public schools were overcrowded and the Board of Education transferred large numbers of its students to less crowded schools. The attendant bussing was met with general protests by both the black and white parents. Litigation ensued in August, 1963 between the NAACP and the Board of Education, alleging, amongst other things, that the St. Louis public schools were illegally segregated.

In October, 1964, by means of separate affidavits and motions, the parties agreed that the Board had taken the necessary actions to cease and eliminate the alleged segregative acts, and the litigation was dismissed by the Federal District Court. Of the approximately 150 schools operated by the Board in 1963, only 19 were uniracial, the remaining 131 schools housed student bodies of various racial mixture.

Between 1960 and 1970, the City of St. Louis experienced an additional loss of 167,604 whites moving out of the City, while the black population increased by more than 41,000. Of the total 1970 City population of 622.236 persons, 336,000, more than half, had moved at least once between 1965 and 1970. Of the 114,284 children between 5 and 14 years old living in St. Louis in 1970, 51,630 (45.2%) were white and 62,654 (54.8%) were black. Of the 111,233 students attending St. Louis public schools in St. Louis, 38,241 (34.4%) were white, while 72,992 (65.6%) were black. Thus between 1953 and 1970, the public schools lost 20,354 white students, while gaining 42,112 black students.

Mrs. Minnie Liddell, in early 1972, was a member of a parent group which resided in North St. Louis, which had been actively working to improve the public schools which their children attended. Because of a population shift, one of the schools, which some of her children attended, was becoming overcrowded. Mrs. Liddell, and the group of parents with whom she was associated, sought to find additional classroom space in their immediate area so that her children would not be transported to other schools more distant from their home. She dealt aggressively and actively with the Defendant, Board of Education, suggesting

several alternatives to transporting her students away from the neighborhood schools. When the Board of Education decided that her children were to be transported away from her neighborhood school, she and several other parents filed this initial action in the United States District Court for the Eastern District of Missouri, alleging that the Board of Education was operating a segregated school system, and asked to have the school system declared as violating the United States Constitution and several statutes.

After slightly more than three (3) years of discovery and negotiations by the attorneys for Mrs. Liddell and the attorneys for the Board of Education, the parties entered into a detailed stipulation of facts, with a number of exhibits attached. On December 24, 1975 they entered into a Consent Decree seemingly disposing of the case without a full trial. The Consent Decree was approved by the District Court Judge, and the implementation of the decree ensued. On January 16, 1976, the NAACP, representing another parent group, sought to intervene in the underlying cause, claiming that Mrs. Liddell and her attorneys no longer represented the interests of all of the class. The attempted intervention was opposed by the Liddell parent group. Ultimately the NAACP was allowed to intervene, and on July 13, 1977, Adams, et al. were also allowed to intervene. On August 10, 1977, the United States also became an Intervening Plaintiff. All of the Intervening Plaintiffs claimed that the original Plaintiffs no longer represented adequately the interests of the class, the class being school children and their parents. On August 12, 1977, Petitioners' Complaint in Intervention, naming as Defendants the United States of America, the

Board of Education of the City of St. Louis, the members of the Board, and various officers of the Board, was filed. The Cross-Complaint alleged that the St. Louis school system had been constitutionally desegregated in 1954. In 1977 the Board of Education established a system of Magnet Schools. In an effort to obtain financial assistance, the Board filed an application with the United States for funds. The Cross-Complaint claimed that the Defendants, United States of America and the Board of Education of the City of St. Louis and its members and officers unconstitutionally, and wrongfully, conspired to discriminate against white parochial students on the basis of their religion and race, in that the United States of America and the Board of Education had created a restrictive admissions requirement for entrance into the Magnet Schools, operated by the Board of Education and funded by the United States. Under the complained of admissions requirements, before each white student would be admitted to the magnet schools from a religiously affiliated school, five black students would have to be admitted coming from any school. The Complaint in Intervention further alleged that, despite the 1954 voluntary desegregation of the St. Louis Public Schools, students were being assigned to schools farther than the school next closest to their homes for the purpose of racial balance at the insistence, direction, and coercion of the United States, all in violation of 20 U.S.C. 1618, 1651, 1652, and 1656.

The United States did not file a response to the allegations of the Complaint in Intervention, but the Board of Education, its members and certain of its officers filed their answer on October 4,

1977, which answer denied the allegations of racial and religious discrimination. The Board admitted that, although it had successfully desegregated its schools in 1954, it had adopted a policy which assigned students to schools farther from the pupil's home than the next closest schools for the purpose of achieving racial balance.

All of the correspondence between the Defendants, United States of America and the St. Louis Board of Education, offered by Adams, et al., was admitted into evidence during a trial which began on October 17, 1977. During the course of the trial, testimony was offered concerning the negotiations and discussions between the Defendants, Board of Education and the United States. Ernest Jones and Robert Wentz, both of whom participated in discussions with representatives of the United States, were questioned about the details of their discussions. The District Court sustained objections to this questioning. An offer of proof was made to the effect that the proffered testimony would disclose that the United States refused to approve funding to the Board of Education with which to operate its Magnet Schools unless and until the Board of Education agreed to establish a formal policy of limiting the number of white students transferring from parochial schools and establishing a formal policy of assigning and transferring students to schools farther away than the next closest to their homes for the purpose of racial balance. Under the required Magnet School admissions policy, applications from public school students would be processed first. If room was available after these applications were processed, applications from students moving into the City were processed. Students from these two groups

would be admitted on the basis of not more than three black children for each white child. When all such applications were processed, if room was still available, applications from parochial students would be processed. Parochial school students, however, were to be admitted on the basis of not more than one white student for every five black students. The complained of transfer and assignment policy required that if a student was to be transferred because his home school is overcrowded, he was to be reassigned to a school which was a majority of the opposite race, rather than to the next closest school with available space.

The trial concluded on May 26, 1978. After all of the briefs had been filed, the oral arguments of the parties were presented to the District Court on February 2, 1979. As a part of their post trial briefs, the United States and the Board of Education filed Affidavits which purported to partially amend the Magnet School admissions requirement by treating the white parochial students as transferring from the neighborhood public school if the student attended the public school within the past three years. The requirement was not changed as to parochial students being processed after all other applications or the five to one limitation. Nor was the reassignment policy of overcrowded schools claimed to have been amended. On April 12, 1979 the United States District Court entered its Order, Judgment and Memorandum Opinion, finding amongst other things that the Defendant, Board of Education of the City of St. Louis had voluntarily constitutionally desegregated the schools within the City of St. Louis by their actions in 1954 and 1955. The Court specifically found that the de facto resegregation which exists in the St.

Louis public schools was caused by factors beyond the control of the Board of Education. The Court also held that the Cross-Complaint of Petitioners was moot, even though there was no testimony or evidence offered during the course of the proceedings to indicate that either the Board of Education or the United States had altered its requirement of the limitation on white students coming from religiously affiliated schools or its policy for reassignment for overcrowding. The United States District Court denied the application of these Plaintiffs for attorneys' fees and costs. On June 7, 1979, these Appellants filed their Notice of Appeal and Designation of Record and Statements of Issues in the United States District Court and this appeal was thereafter perfected.

On March 3, 1980, the United States Court of Appeals for the Eighth Circuit issued its opinion reversing the District Court's opinion of the effectiveness of the 1954 voluntary desegregation. The Court of Appeals found that at least until 1954, the Suburban St. Louis School Districts "collaborated with each other and with the City of St. Louis to ensure the maintenance of segregated schools." The Court did not note the difference between the Board of Education of the City of St. Louis and the City of St. Louis which are two separate governments. The Court, without additional comment, sustained the District Court opinion as to the mootness of the special admissions requirement. The Court of Appeals also ruled that the NAACP should be awarded attorneys' fees, if they desired them, although the NAACP did not appeal the District Court's denial of fees. The Court ordered the Board to file with the District Court within 60 days a system-wide desegregation plan affecting only the schools within the City of St. Louis.

On April 21, 1980, these Petitioners filed their Motion for a Stay with the Circuit Court.

REASONS FOR GRANTING WRIT

I

Certiorari should be granted to resolve whether the actions of third parties, which result in de facto resegregation, can be sufficiently impuned to School Boards so as to allow a comparison of the number of uniracial schools in 1954 to the number of schools which are more than 85% one race in 1962 as the test of the effectiveness of a voluntary desegregation plan.

II

Certiorari should be granted to resolve whether an intradistrict remedy can be ordered and limited after a specific finding of interdistrict violation.

III

Certiorari should be granted to resolve whether post-trial Affidavits may form the sole basis for judicial determinations.

IV

Certiorari should be granted to resolve the appropriateness of attorneys' fees awards in Civil Rights Cases.

I

CERTIORARI SHOULD BE GRANTED TO RESOLVE WHETHER THE ACTIONS OF THIRD PARTIES, WHICH RESULT IN DE FACTO RESEGRE-

GATION, CAN BE SUFFICIENTLY IMPUNED TO SCHOOL BOARDS SO AS TO ALLOW A COMPARISON OF THE NUMBER OF UNIRACIAL SCHOOLS IN 1954 TO THE NUMBER OF SCHOOLS WHICH ARE MORE THAN 85% ONE RACE IN 1962 AS THE TEST OF THE EFFECTIVENESS OF A VOLUNTARY DESEGREGATION PLAN.

Since the Petitioners' Cross-Complaint is based, in part, on the effectiveness of the voluntary 1954 desegregation accomplished by the Board, the issue of that plan is discussed first. If the 1954 plan was constitutionally effective, then the assignment policy from overcrowded schools of 1977 was clearly illegal.

Prior to 1954, the Board of Education of the City of St. Louis, a separate governmental body from the City of St. Louis, operated a State mandated de jure segregated school system. Prior to this Court's ruling in Brown vs. Board of Education, 347 U.S. 483 (1954), the Board began preparations for the establishment of a desegregated system. Following the suggestions of Brown, the Board set about to establish neighborhood school boundaries. The Board reduced all of its student information to computer cards. The information was then assembled in such a way that the number of students attending public schools and living on each city block was shown by grade on separate cards. The capacity of each school building was determined by multiplying the number of classrooms in the building by 30, which was the district-wide pupil-teacher ratio. In this way, none of the schools would be overcrowded, and all schools would have the same pupil-teacher ratio. Using the student location cards, students were assigned, by block of residence, to the nearest school until that school's capacity was reached, and then the

next school was used. Every child on a given block was, in this way, assigned to the same school. A block would not be divided. Both the elementary and secondary school assignments were made the same way. This is the kind of neighborhood assignment system approved in Brown vs. Board of Education, 349 U.S. 294, 300-301 (1955), Ellis vs. Board of Public Instruction, 423 F.2d 203, 207-208 (5 C.A., 1970); Goss vs. Board of Education, 406 F.2d 1183 (6 C.A., 1969), 444 F.2d 632, 636-637 (6 C.A., 1971); Goss vs. Board of Education, 320 F.Supp. 549, 551 (E.D. Tenn., 1970).

Prior to 1954, the Board operated two teachers colleges, Harris College for Whites and Stowe College for Blacks. The two schools were desegregated by merging the two of them into one, and all students attending the same building, subsequently named Harris-Stowe Teachers College. All the special schools were similarly merged, so that all of the orthopedically handicapped students, black and white, attended the same building. The implementation of the plan began in September, 1954 and was concluded in September, 1955.

The black population, prior to 1954, was widely dispersed throughout the City of St. Louis, although in many areas there were very few black families. The 1950 Census reflects that the highest concentrations of black families were on the immediate north and west sides of the downtown business district. Even in these areas, there was a racial mixture of population.

Immediately after the implementation of the Board's plan, there were very few schools which did not contain a racially mixed student population. The community acceptance of the plan was evidenced by a

survey of parent preferences. The parents were asked their preference as to the school they would prefer their children to attend. This preference poll reflected that the vast majority of parents preferred the children to attend the racially mixed neighborhood schools, so that if the parents' preferences had governed, 37 of the 83 formerly white elementary schools would have black enrollments ranging from 56% to 1%, while 13 of the 40 formerly black schools would have white enrollments of from 18% to less than 1%. The preference poll reflected that over two-thirds of the entire student population was attending racially mixed schools. As the school year went on, these preferences changed more and more to the neighborhood school, which would have produced more racial mixture. While these figures reflect a high degree of racial mixture, the actual mixture was higher. The preference poll would imply that those not preferring the racially mixed neighborhood schools were applying to their former uniracial school. These applications were approved only if there was sufficient room in these schools, and if the students provided their own transportation. Realizing that there would not be room in most of these schools, or that the transportation would be too prohibitive, many students were attending their neighborhood schools even though they may have "preferred" otherwise. This limited option was not available to students who were either starting in the public school for the first time or were starting high school after graduating from elementary school.

Since the Board maintained no racial data on their students between 1955 and 1962, we do not know the exact racial mixture in each school for this period. Because of information from other sources,

we do know that the resident populations in many school attendance zones were racially mixed between 1954 through 1962. The St. Louis Housing Authority maintained statistical data on the race of the residents living in public housing projects. Use of the 1950 and 1960 Census tract data also provided a reasonably accurate representation of the racial configuration of the attendance zones. In almost every instance, we saw a racially mixed student population in 1954 and 1955 become resegregated by population shifts. We know that by 1962, 11 of the 80 formerly white elementary schools and 1 of the 7 formerly white high schools had become 90% black in student enrollment. The District Court, in discussing the rapidly changing racial composition of school enrollments attributed these changes to population movements into, out of, and within the City of St. Louis. The Court of Appeals concluded that this was the evidence that the Board of Education had maintained segregated schools.

The Court of Appeals found the District Court was in error in determining that the 1954 desegregation plan met the Constitutional requirements as well as the effectiveness of the plan. In commenting on the effectiveness of the 1954 plan, the Circuit Court said:

> "An examination of the maps and population statistics in this record makes it clear that the Board could have, without sacrificing the neighborhood concept, drawn the boundaries so as to include numbers of white students in the formerly all-black schools. A reading of the record also makes clear, however, that strong community opposition has

> prevented the Board from integrating the white children of south St. Louis with the black children of north St. Louis."

In its opinion, the District Court described the physical, social, and governmental forces which caused the racial composition of various areas and schools in St. Louis to change subsequent to 1954. Amongst the causes listed for de facto resegregation of the public schools were the building of expressways and widespread automobile ownership, abundance of land in suburban areas suitable for home construction, increase of employment opportunities in suburban areas, migration of blacks within the City of St. Louis, demolition of slum areas within the area, and subsequent construction of low income housing projects, physical abandonment of neighborhoods by property owners and housing segregation practiced by the United States Department of Housing and Urban Development. The District Court found that these forces acted in such a way to cause the student racial composition in schools to change so rapidly that, for instance, in the central section of St. Louis, the public schools lost 35% of their population in six months, while a nearby section gained as much as 25% new students in the same amount of time. The District Court noted:

> "The eventual result of the massive population shifts and changing school enrollments was the resegregation of many schools that were previously integrated."

The Court of Appeals acknowledged:

> "We do recognize that many of the factors cited by the (District)

> Court, including actions of the state and federal governments, have intensified racial segregation in north St. Louis. We have taken this fact into consideration in determining the appropriate remedy in this case."

The issue was raised, at both the District and Circuit Court levels, that the establishment of the neighborhood assignment system had the foreseeable consequences of maintaining the pre-1954 segregated schools. The District Court concluded that the 1954 plan did not have the foreseeable effect of maintaining segregation because "The massive changes in the racial make up of the City in the late 1950's and 1960's were not foreseeable by the Board." Austin Independent School District vs. United States, 429 U.S. 990, 994 (1976). In ruling that this conclusion was clearly erroneous, the Circuit Court found that:

> "The Board knew that when its plan was implemented, the white schools in south St. Louis would remain white and the black schools in the 'core' area of the City would remain black."

The portions of the District Court and Circuit Court opinions quoted above disclose the disparate conclusions reached by the two courts as to the findings of fact. The Circuit Court gave little, if any, deference to the District Court's factual adjudication, as it should have. Columbus Board of Education vs. Penick, _____ U.S. _____; 61 L.Ed.2d 666, 684-685, and 718 (1979); Dayton Board of Education vs. Brinkman, _____ U.S. _____, 61 L.Ed.2d 720, 731, and 737 (1979). In its haste to apply

a new standard to test the effectiveness of the 1954 desegregation plan, the Circuit Court declined to examine the events taking place between 1954 and 1962. The Circuit Court declined to give the required deference to the District Court in applying the clearly erroneous rule. In view of this lack of deference by the Circuit Court, it becomes incumbent on this Court to review the evidence and testimony to apply the clearly erroneous rule. Dayton Board of Education vs. Brinkman, _____ U.S. _____, _____; 61 L.Ed.2d 720, 731, and 737 (1979); Columbus Board of Education vs. Penick, _____ U.S. _____, _____; 61 L.Ed.2d 666, 686, 687, and 698 (1979).

In determining whether the 1954 plan was effective in disestablishing the pre-1954 dual school system, the Court of Appeals chose to compare the pre-1954 racial composition of schools to the number of schools that were predominantly uniracial in 1962. The Court made no examination of the data and evidence introduced at trial as to the condition of schools between 1955 and 1962. This data discloses that during this period only a few schools were uniracial. The Court found that by 1962, all of the pre-1954 black schools still in existence were all or virtually all black. The Court did not discuss that of these 28 pre-1954 black schools, 12 of them had white students in 1962. Neither did the Court discuss the fact that of the 80 pre-1954 white schools, 55 of them contained blacks in 1962. In addition, the Court of Appeals did not comment on the fact that 12 of the pre-1954 white schools had become at least 90% black by 1962. Nor did the Court consider the natural consequences of the 29,061 additional black students enrolled in 1962 over the number enrolled in 1954. The Court concluded that the 1954 plan was

ineffective because eight years later, in 1962, 16 of 28 pre-1954 black schools had no white students, 38 other schools were more than 90% black, 81% of the black students attended schools that were at least 90% black, and 67% of the white students attended schools that were at least 90% white. Putting aside the racial changes in the individual schools' enrollment between 1954 and 1962, the Court of Appeal's conclusion is based on the fact that of the 131 schools operated by the Board, 37 had the same racial composition in 1962 as they did in 1954. Of these 37 schools, most, if not all, had some varying degrees of racial mix between 1954 and 1962.

The Court of Appeals has thus established a new criteria for determining the effectiveness of a voluntary desegregation plan. The Court of Appeals has in effect stated that the test is the number of one race schools prior to the implementation of a plan and the number of one race schools eight years after the implementation of the plan. Intervening events and the fact that many of the schools have reversed their racial composition are to be treated as foreseeable by and therefore impunable to the Board. The Circuit Court's opinion would seem to be a departure from previous rulings that school boards do not have a continuing obligation to make annual adjustments after creating a unitary and desegregated school system. Pasadena City Board of Education vs. Spangler, 427 U.S. 424, 434-435 (1976).

Prior to this decision, it was acceptable to use the neighborhood assignment to disestablish a dual attendance and school system. Brown vs. Board of Education, 349 U.S. 294, 300-301 (1955); Green vs. New Kent County Board of Education, 391 U.S.

430, 442 (1968); Swann vs. Charlotte-Mecklenburg, 402 U.S. 1, 28 (1971); Goss vs. Board of Education, 406 F.2d 1183, (6 C.A., 1969); Ellis vs. Board of Public Instruction, 423 F.2d 203, 207-208 (5 C.A., 1970). There has not been any particular minimum racial mixture required at each school in the system to have a unitary system. Swann vs. Charlotte-Mecklenburg, 402 U.S. 1, 24 (1971); Milliken vs. Bradley, 418 U.S. 717, 740-741 (1974); Austin Independent School District vs. United States, 429 U.S. 990, 995 (1976). Similarly, a plan is not defective merely because a higher degree of racial mixture is theoretically possible than provided in a particular plan. Calhoun vs. Cook, 525 F.2d 1203 (5 C.A., 1975); 20 U.S.C. §1704.

The use of comparing a school system in years several years apart has not been previously judicially approved as a proper test. The reasons are that urban areas are in a constant state of flux and not susceptible to stability over any particular period of time. Pasadena vs. Spangler, 427 U.S. 424, 436 (1976).

The Circuit Court of Appeals has established a new test for reviewing the effectiveness of desegregation efforts. Unless this Court grants its Writ of Certiorari, every school district in the Eighth Circuit which voluntarily desegregated subsequent to 1954 is at risk of having a challenge to their school system if the school system is not racially balanced at least eight years later. This will not only chill the voluntary desegregation efforts, but will increase litigation in school cases and establish separate Constitutional criteria amongst the circuits. Because the Circuit Court's opinion uses and establishes a new test not previously used or

approved, the opinion should be reviewed by this Court to determine whether the test is a proper measure of the effectiveness of voluntary desegregation plans. In order to insure a uniform rule of law amongst the Circuits and encourage voluntary compliance with the Constitution, this Court should issue its Writ of Certiorari.

II

CERTIORARI SHOULD BE GRANTED TO RESOLVE WHETHER AN INTRADISTRICT REMEDY CAN BE ORDERED AND LIMITED AFTER A SPECIFIC FINDING OF INTERDISTRICT VIOLATION.

As a part of its findings, the Circuit Court concluded and noted that "some suburban communities in Missouri continue to try to enforce discriminatory housing restrictions against blacks." The Court also found that "St. Louis County suburban school districts collaborated with each other and with the City of St. Louis to insure the maintenance of segregated schools." Among the practices cited by the Court was the assignment and transportation of black students living in the suburbs to black schools in the City. For the purposes of this petition, we assume that the Court misconstrued the difference between the government of the City of St. Louis and the Board of Education of the City of St. Louis and that it presumed the two governmental units were the same governmental unit. The Court also found that actions of the State and Federal governments enforced racial housing discrimination in the Metropolitan St. Louis area.

Having found these interdistrict and intergovernmental violations were amongst the causes for what the Court determined was a de jure segregated school system, the

Circuit Court concluded that the remedy would be limited to the confines of the City of St. Louis. In limiting the remedy for interdistrict violations to an intra-district remedy, the Court admitted that the interdistrict remedy would have the best chance of permanently integrating the schools in the metropolitan St. Louis area. The court quoted the "expert" proffered by the United States on potential remedies. Dr. Orfield testified:

> "[T]he most stable kind of plan is a metropolitan-wide proportional enrollment plan . . .
>
> "Anything that can be done to involve the suburban districts should be done."

In directing the scope of the remedy it ordered, the Court limited the remedy to the City of St. Louis.

> "The Board is, therefore, to be required to develop a system-wide plan for integrating the elementary and secondary schools of the district."

In most prior cases before this Court, the issue has been whether an interdistrict remedy can be ordered in the absence of an interdistrict violation. Milliken vs. Bradley, 418 U.S. 717, 744-745 (1974). In some cases, where an interdistrict violation has been found, an interdistrict remedy has been ordered. United States vs. Board of School Commissioners, 541 F.2d 1211 (7 C.A., 1976), vacated and remanded 429 U.S. 1068 (1977); reconsidered 573 F.2d 400 (7 C.A., 1978) cert. denied 439 U.S. 824 (1978), on remand 456 F.Supp. 183 (S.D. Ind., 1978); Newburg Area Council, Inc. vs.

Board of Education, 489 F.2d 925 (6 C.A., 1973), vacated and remanded 418 U.S. 918 (1974), reconsidered 510 F.2d 1358 (6 C.A., 1974), cert. denied 421 U.S. 931 (1975); Evans vs. Buchanan, 416 F. Supp. 328 (D. Del., 1976); 555 F. 2d 373 (3 C.A., 1977), 447 F.Supp 982 (D. Del., 1978), aff'd. 582 F.2d 750 (3 C.A., 1978).

This poses the heretofore unique converse of previous decisions. Where in the past the Courts have limited intradistrict remedies to those cases where no interdistrict violations were found, in this case, the Circuit has limited the correcting of the interdistrict violation to an intradistrict remedy. The Circuit Court's opinion unequivocally stands as precedent that Federal Courts have seemingly unguided discretion to remedy interdistrict violations by either interdistrict or intradistrict remedies. Under this precedent, it would appear that the remedies for violations need not be tailored to fit the violation. Such a rule is a departure from previous rulings of this Court. Regents of the University of California vs. Bakke, 438 U.S. 265, 300-301 (1978). The Circuit Court unequivocally took this interdistrict collaboration into account in fashioning the ordered remedy.

> "We do recognize that many of the factors cited by the Court, including actions of the State and Federal governments, have intensified racial segregation in north St. Louis. We have taken this into consideration in determining the appropriate remedy in this case. We have no alternative but to require a system-wide remedy for what is clearly a system-wide violation."

If the remedy is to be limited to the City of St. Louis and is to be implemented by the Board of Education, then it would seem that the interdistrict violation had no effect on the conditions in the City of St. Louis. If that is true, then there would be no need to fashion a system-wide remedy to overcome these violations. If there was no interdistrict violation, then the remedy ordered by the Circuit Court would be too severe. However, if there were interdistrict violations, then limiting the remedy to the City of St. Louis would be too restrictive. The Circuit Court appears to be saying that an interdistrict violation should be cured by an intradistrict remedy.

Unless this Court issues its Writ of Certiorari, there will be a clear, unresolved conflict within the circuits as to whether an intradistrict is constitutionally acceptable after a judicial determination and finding of an interdistrict violation.

III

CERTIORARI SHOULD BE GRANTED TO RESOLVE WHETHER POST-TRIAL AFFIDAVITS MAY FORM THE SOLE BASIS FOR JUDICIAL DETERMINATIONS.

The Petitioner had filed a Cross-Complaint in Intervention against the United States and the Board of Education, its members, and administrative officers, in which they alleged that the Defendant, United States, coerced and conspired with Defendant, Board, its members and officers, to establish discriminatory entrance requirements and assignment policies subsequent to April 22, 1977. The Cross-Complaint alleged that the public schools were desegregated in the school year 1954-

1955, and remained de jure desegregated until April 22, 1977. It was on or about April 22, 1977 that the unlawful transportation and Magnet School policies were approved by the United States and the Board of Education. In order to fund the operation of its Magnet Schools, the Board of Education applied to the United States, through the Department of Health, Education, and Welfare, for financial grants and assistance. The Defendant, United States, conditioned its funding of the Magnet Schools on the Board accepting and adopting these two assignment and admission policies. In order to obtain the funds from the United States, the Board, after originally objecting to the requirements, ultimately acceded to the demands of the United States. The Board thereafter complied with the requirements of the United States. The Cross-Complaint sought a declaratory judgment declaring the policies unconstitutional and illegal and attorneys' fees under the provisions of 42 U.S.C. 1988.

There are two categories of unlawful acts involved. The first was the reassignment of students in overcrowded schools to schools more distant than the next closest school with available space. The assignments were made to accomplish a higher degree of racial mixture. The practice was in violation of the 14th Amendment of the United States Constitution, 20 U.S.C. §§1618, 1651, 1652, 1656, and 42 U.S.C. §§1981, 1983, 1985(3), and 2000-C. The second violation dealt with the federal funding of the Magnet Schools operated by the Board. The Magnet Schools were specialized elementary and secondary schools concentrating curricula in designated areas. Admission to these schools was by application, with the racial limitation that each school had to be at least 50% but not more

than 75% black in its student enrollment. In determining which applications would be approved, the Board acceded to several restrictions, which included (1) applications from public school students would be reviewed first; (2) students would be admitted on the basis of not more than 3 black public school students for every one white public school student; (3) students moving into the City for the first time would be treated as applying from the City public schools; (4) after these applications are processed, if there is still space available, applications from non-public school students would be processed; and (5) white students applying from religiously affiliated schools would be admitted on the basis of one such student for every five black students. This admission criteria was in violation of the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§1981, 1983, 1985(3), and Article IX, Section 1(a) of the Missouri Constitution.

The United States denied none of the allegations of the Cross-Complaint. At the trial, the District Court barred any oral testimony as to conversation between representatives of the Board and the United States on the allegations of the Cross-Complaint, but accepted into evidence the correspondence between them. An offer of proof was made that if oral testimony had been permitted, it would have disclosed that the United States imposed an absolute prerequisite that the Board would have to accept and adopt all of the complained of policies or the United States would deny the funding for the Magnet Schools. The correspondence between these parties, which was accepted into evidence, disclosed the major part of the United States' pre-conditions.

Some eight months after the close of the trial, as a part of the post-trial briefing, the Board and the United States contended that they had modified a portion of their magnet school admission criteria and that the Cross-Complaint was therefore moot. The alleged modification provided that if a white parochial school student had not attended a public school within the three prior years, he or she would be treated as applying from the public schools. The modification had no effect on the reassignment for overcrowding policy, nor did it alter the situation for white parochial students' applications being processed after those of public school students, nor did it alter the 5-1 limitation on students who had attended any public school within the three prior years.

The District ruled that the Cross-Complaint was nevertheless moot, and denied attorneys' fees. The Court of Appeals affirmed this part of the District Court Judgment. While the District Court found the policies to have no rational basis, neither Court made any specific findings of fact or conclusions of law as to why the case was treated as moot. Federal Rule of Civil Procedure 52(a); 9 Wright & Miller, Federal Practice and Procedure, §2579. In the absence of any evidence of mootness at trial, the only intimations that the complained of policies do not remain unabated were the representations of the Defendants after the trial concluded. The opinions of the District and Circuit now stand as precedent that parties may offer "evidence" after trial without reopening the case, and that if this "evidence" indicates any change in the circumstances of the case, however slight, the case can be dismissed as moot.

Petitioners admit that they can find no authority for such precedent prior to this case, and, indeed, neither the District nor the Circuit Courts cited any such authority. This judicial policy is unique in American Jurisprudence. Unless this Court grants its Writ of Certiorari, a new rule of law will be established which would provide an effective device to thwart all civil rights actions. Parties accused of civil rights violations could slightly modify their misdeeds after the trial and be assured that the Plaintiff's cause would be dismissed.

IV

CERTIORARI SHOULD BE GRANTED TO RESOLVE THE APPROPRIATENESS OF ATTORNEYS' FEES AWARDS IN CIVIL RIGHTS CASES.

The District Court denied attorneys' fees for all Plaintiffs. The Plaintiffs requesting the award of fees were the original Plaintiffs, Craton Liddell, et al; your petitioners, Janice Adams, et al.; and, arguably, the NAACP. Only the original Plaintiffs and your Petitioners appealed this portion of the District Court's Order. Although the NAACP did not appeal the denial of attorneys' fees to it, the Court of Appeals reversed the District Court on fees for the original Plaintiff and the NAACP, but affirmed as to fees for Petitioners.

Prior to the decisions in this case, attorneys' fees were awarded under 42 U.S.C. 1988, to the prevailing Plaintiff. As to Petitioners' Cross-Complaint, the Plaintiff was considered to have prevailed if judgment was entered in his favor, or if Defendants terminated the complained of practice before judgment. Wharton vs. Knefel, 562 F.2d 550, 557 (8 C.A., 1977;

International Society of Krishna vs. Anderson, 569 F.2d 1027, 1029 (8 C.A., 1978); Nebraska Penal and Correctional Complex vs. Greenholz, 567 F.2d 1381, 1384 (8 C.A., 1977). It must also appear that the voluntary cessation of unlawful conduct must be such that there is no reasonable possibility that the wrong can be reinitiated. Rabinowitz vs. Board of Junior College District No. 508, 507 F.2d 1255, 1256 (7 C.A., 1974). Petitioners urge that they were the prevailing parties. The uncontroverted evidence unequivocally discloses that the discriminatory practice continued unabated until after the trial concluded on May 26, 1978. All the evidence discloses that there was no educational or administrative basis for the two complained of policies. On this basis, Petitioners should have prevailed. Wharton vs. Knefel, 562 F.2d 550, 557 (8 C.A., 1977), citing Newman vs. Piggie Park Enterprises, Inc., 390 U.S. 400, 402-403 (1968). Even if the claimed cessation by the Board and the United States had in fact totally and irrevocably terminated the unlawful and discriminatory policies, Petitioners should have been treated as the prevailing parties.

Unless this Court issues its Writ of Certiorari, the Civil Rights Attorneys' Fees Award Act of 1976 (42 U.S.C. §1988) will have become judicially amended, if not repealed. There does not appear to be anything in the legislative history of this Act or in prior judicial decisions to indicate that this is the desire of the Congress.

The Circuit Court also concluded that it was "unclear" whether the NAACP had requested attorneys' fees at the District Court level, but most assuredly, the denial of fees to it by the District Court was not

appealed. Nevertheless, the Circuit Court ordered that, if the NAACP had requested attorneys' fees in the District Court, the District Court should, on remand, determine a reasonable attorneys' fee for them.

This part of the Circuit Court decision presents two unique aspects. The first is that the Circuit Court has awarded attorneys' fees when it was doubtful whether any had been requested. The second is that the Circuit Court has reversed that part of the judgment from which no appeal was taken.

We are unable to locate any cases which hold that a Court can award attorneys' fees when it is doubtful that any were requested. Unless this Court issues its Writ of Certiorari, the Circuit Court's opinion will stand for authority that attorneys' fees will be awarded automatically and as a matter of course, regardless of whether any are requested.

The second issue, the failure of the NAACP to appeal, is more serious in its consequences to the judicial process. Rule 28(a) Federal Rules of Appellate Procedure required the Appellant to set out the issues which it is appealing. Regarding any issue not set out in the brief, the point has not been preserved for appeal, and the Circuit Court may not consider the question. General Finance Loan Co. vs. General Loan Co., 163 F.2d 709, 711 (8 C.A., 1947); Brown vs. Sielaff, 474 F.2d 826, 828 (3 C.A., 1973); Virginians for Dulles vs. Volpe, 541 F.2d 442, 444 (4 C.A., 1976). The Circuit Court specifically noted that the NAACP did not appeal the denial of attorneys' fees to it. Nevertheless, the Court gratuitously reversed the District Court and ordered the District Court to determinine a reasonable fee, if the NAACP had asked for one.

Unless this Court issues its Writ of Certiorari, this case would make a shambles of the orderly process of Federal Judicial Appellate Procedure. The Circuit Courts should speculate as to what issues might be reviewable. The Courts would be granted a roving commission to roam through the records of proceedings and to create issues when none are presented for their decision. Unbridled and perhaps arbitrary discretion would be vested in Circuit Courts, and no judgment of a District Court would be safe from collateral attack.

CONCLUSION

For all these reasons, it is respectfully urged that this Court order and issue its Writ of Certiorari and that the Court take jurisdiction to hear the appeal.

Respectfully submitted,

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APPENDIX 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,

Plaintiffs,

vs.

THE BOARD OF EDUCATION
OF THE CITY OF ST. LOUIS,
STATE OF MISSOURI, et al.,

Defendants.

UNITED STATES CONSTITUTION

AMENDMENT 1

Religious and Political Freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. Power to Enforce Amendment.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

TITLE 20 UNITED STATES CODE

§ 1601. Findings and Purpose

(a) The Congress finds that the process of eliminating or preventing minority group isolation and improving the quality of education for all children often involves the expenditure of additional funds to which local educational agencies do not have access.

(b) The purpose of this title [20 USCS §§ 1601 et seq.] is to provide financial assistance-

(1) to meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools;

(2) to encourage the voluntary elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students; and

(3) to aid school children in overcoming the educational disadvantages of minority group isolation.

§ 1618. Neighborhood Schools

Nothing in this title [20 USCS §§ 1601 et seq.] shall be construed as requiring any local educational agency which assigns students to schools on the basis of geographic attendance areas drawn on a racially nondiscriminatory basis to adopt any other method of student assignment.

§ 1651. Limitation

No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

§ 1652. Prohibition Against Use of Appropriated Funds for Bussing

(a) No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except on the express written voluntary request of appropriate local school officials. No such funds shall be made available for transportation when the time or distance of travel is so great as to risk the health of the children or significantly impinge on the educational process of such children, or where the educational opportunities available at the school to which it is proposed that any such student be transported will be substantially inferior to those opportunities offered at the school to which

such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

(b) No officer, agent, or employee of the Department of Health, Education and Welfare (including the Office of Education), the Department of Justice, or any other Federal agency shall, by rule, regulation, order, guideline, or otherwise (1) urge, persuade, induce, or require any local education agency, or any private nonprofit agency, institution, or organization to use any funds derived from any State or local sources for any purpose, unless constitutionally required, for which Federal funds appropriated to carry out any applicable program may not be used, as provided in this section, or (2) condition the receipt of Federal funds under any Federal program upon any action by any State or local public officer or employee which would be prohibited by clause (1) on the part of a Federal officer or employee. No officer, agent, or employee of the Department of Health, Education, and Welfare (including the Office of Education) or any other Federal agency shall urge, persuade, induce, or require any local education agency to undertake transportation of any student where the time or distance of travel is so great as to risk the health of the child or significantly impinge on his or her educational process; or where the educational opportunities available at the school to which it is proposed that such student be transported will be substantially inferior to those offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race,

religion, color or national origin.

(c) An applicable program means a program to which the General Education Provisions Act [20 USCS §§ 1221 et seq.] applies.

§ 1654. Intervention in Court Orders

A parent or guardian of a child, or parents or guardians of children similarly situated, transported to a public school in accordance with a court order, may seek to reopen or intervene in the further implementation of such court order, currently in effect, if the time or distance of travel is so great as to risk the health of the student or significantly impinge on his or her educational process.

§ 1656. Construction of Proviso Prohibiting Use of Bussing to Achieve Racial Balance

The proviso of section 407(a) of the Civil Rights Act of 1964 [42 USCS § 2000c-6] providing in substance that no court or official of the United States shall be empowered to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance or otherwise enlarge the existing power of the court to insure compliance with constitutional standards shall apply to all public school pupils and to every public school system, public school and public school board, as defined by title IV [42 USCS §§ 2000c et seq.], under all circumstances and conditions and at all times in every State, district, territory, Commonwealth, or possession of the United States regardless of whether the residence of such

public school pupils or the principal offices of such public school system, public school or public school board is situated in the northern, eastern, western, or southern part of the United States.

§ 1704. Balance Not Required

The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, or students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

§ 1705. Assignment on Neighborhood Basis Not a Denial of Equal Educational Opportunity

Subject to other provisions of this part [20 USCS §§ 1701 et seq.], the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of race, color, sex, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

§ 1706. Civil Actions

An individual denied an equal educational opportunity, as defined by this part [20 USCS §§ 1701 et seq.] may institute a civil action in an appropriate district court of the United States against such parties, and for such relief as may be appropriate. The Attorney General of the United

States (hereinafter in this title [20 USCS §§ 1701 et seq.] referred to as the "Attorney General"), for or in the name of the United States, may also institute a civil action on behalf of such an individual.

TITLE 42 UNITED STATES CODE

§ 1981. Equal Rights Under the Law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

§ 1983. Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

§ 1985. (3) Depriving Persons of Rights or Privileges.

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for

the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

§ 1988. Proceedings in Vindication of Civil Rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and

for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 USCS §§ 1681 et seq.], or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code [26 USCS §§ 1 et seq.[, or title IV of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as a part of the costs.

§ 2000c. Definitions

As used in this title [42 USCS §§ 2000c, 2000c-2-2000c-9] -

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

§ 2000c-8. Right of Individual to Bring Suit

Nothing in this title [42 USCS §§ 2000c, 2000c-2-2000-9] shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

§ 2000c-9. Nonprohibited Classification or Assignment

Nothing in this title [42 USCS §§ 2000c, 2000c-2-2000c-9] shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.

CONSTITUTION OF THE STATE OF MISSOURI

Article IX

§ 1(a). Free Public Schools-Age Limit

Section 1(a). A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,

Plaintiffs,

vs.

THE BOARD OF EDUCATION
OF THE CITY OF ST. LOUIS,
STATE OF MISSOURI, et al.,

Defendants.

COMPLAINT

Come now the Plaintiffs in the above entitled cause and state to the Court as follows:

1. That this Court has jurisdiction of this cause of action pursuant to 28 U.S.C. 1343 (3), (4); 28 U.S.C. 2201; and 42 U.S.C. 1983, 1988 and 2000d, and the Fourteenth Amendment to the Constitution of the United States;

2. That Plaintiffs are black children and their parents who reside in the City of St. Louis, State of Missouri, and are served by public schools maintained and operated by the Board of Education of the City of St. Louis, Missouri; and that the children are eligible to attend, and do attend, the public schools of the City of St. Louis.

3. Plaintiffs further state that they have filed this action on behalf of themselves and all other school age chil-

dren and their parents similarly situated in the City of St. Louis; and that Plaintiffs satisfy the requirements of Rule 23, Federal Rules of Civil Procedure, particularly, in that the class represented is so numerous that joinder of all members is impracticable, the questions of law and fact are common to the class, the claims of Plaintiffs are typical of the claims of the class, and Plaintiffs will fairly and adequately protect the interest of the class.

4. Plaintiffs further state that the Board of Education of the City of St. Louis, by the laws of Missouri, is a single metropolitan school district, a body corporate, and its geographical boundaries are conterminous with the political geographical boundaries of the City of St. Louis;

5. That the said Board of Education of the City of St. Louis has the supervision and government of public schools and public school property within said district; and in the name of said Board of Education may sue and be sued, purchase, receive, hold and sell property, and do all things necessary to accomplish the purposes for which the school district is organized.

6. That by said laws of Missouri, all titles to property granted to the City of St. Louis by the United States or the State of Missouri for school purposes, and the title to all school lands and other property of every kind within the City of St. Louis is vested in the Board of Education of the City of St. Louis.

7. Plaintiffs further state that the laws of Missouri require the Board of Education of the City of St. Louis to organize annually by electing a president, vice-president and secretary from its members, and to appoint a superintendent of schools; and that should the superintendent of schools be unable to perform his duties as required by law, or if the office of superintendent becomes vacant, the Board shall appoint an acting superintendent to serve during the period of disability of the superintendent or the vacancy in the said office;

8. That the laws of Missouri vest the Board of Education of the City of St. Louis with general and supervising control, government and management of the public schools and public school property in said City of St. Louis, and generally, all powers in the administration of the public school system in said City, inter alia, the following: the power: (a) to appoint the officers, agents and employees it deems necessary and proper and fix their compensation;

(b) To make, amend and repeal rules and by-laws for the government, regulation and management of the public schools and school property in said City;

(c) To examine, qualify and employ teachers;

(d) To levy taxes authorized by law for school purposes;

(e) To purchase and hold all property, real and personal, deemed by it necessary for the purpose of public education;

(f) To build and construct improvements for such purposes, and sell the same; and

(g) To provide for the gratuitous transportation of pupils to and from schools in cases where by reason of special circumstances pupils are required to attend schools at unusual distances from their residences.

9. Plaintiffs further state that pursuant to the laws of the State of Missouri, the Board of Education of the City of St. Louis appointed a Superintendent of Schools; and during his leave of absence, an Acting Superintendnet of Schools (Defendant Earnest Jones), was appointed for the year 1971 to 1972, with statutory authority (subject to the approval of the Board of Education of the City of St. Louis, or under regulations made by the said Board of Education) inter alia, as follows:

(a) To appoint a Treasurer;

(b) To appoint Associate and assistant superintendents;

(c) To prepare and administer the annual budget of the school system;

(d) To have general supervision of the school system, including its various departments and physical properties, courses of instruction, discipline and conduct of schools, the introduction and changes of textbooks and apparatus, and studies;

(e) To have general supervision of all school buildings, including their construction, repair, care and maintenance.

10. Plaintiffs further state that Defendants:

Daniel L. Schlafly,	Mrs. Adele Smiley,
Frederick E. Busse,	Rev. James L. Cummings,
Mrs. Garnell DeRamus,	Andrew M. Doyle,
Malcolm W. Martin,	James E. Hurt,
Mrs. A. W. Scheetz,	Elmer W. Pounds,
Mrs. Gilbert Harris,	Wallace D. Schoenbeck,

are all of the duly elected, qualified and acting members of the Board of Education of the City of St. Louis; that the statutory officers of the said Board are:

President:	Daniel L. Schlafly
Vice-President:	Mrs. Adele Smiley
Secretary:	

and that they are joined in their official capacities as members of said Board.

11. Plaintiffs further state that on the recommendation of the Superintendent of Schools and approval of the Board of Education of the City of St. Louis, the area contained within the political geographical boundaries of the City of St. Louis was divided into five school districts with fixed geographical boundaries, each containing high schools and feeder elementary schools within the district; and that school age children living within the districts are assigned to the elementary and high schools by the district superintendents under the general supervision of the Superintendent of Schools of the Board of Education of the City of St. Louis;

12. That Defendants:

Julius C. Dix
Benjamin M. Price
Wilmar R. Schneider

R. W. Janning
Charles Brasfield

are the district superintendents of the following school districts within the metropolitan school district of the Board of Education of the City of St. Louis and serve under, and are responsible to the Superintendent of Schools of the Board of Education of the City of St. Louis:

Julius C. Dix:	Bannecker: Central-Vashon District Two (2) high schools and 28 elementary schools
Benjamin M. Price:	Beaumont-Sumner District Two (2) high schools, one (1) middle school, and 33 elementary schools
Wilmar R. Schneider:	Cleveland-Southwest District Two (2) high schools and 28 elementary schools
R. W. Janning:	McKinley-Roosevelt District Two (2) high schools and 32 elementary schools
Charles Brasfield:	Northwest-Soldan District Two (2) high schools and 30 elementary schools; one (1) middle school

and that all Defendants are situated in, reside in, or perform their official duties in the Eastern Judicial District of Missouri, Eastern Division.

13. Plaintiffs further state that Defendants, the Board of Education of St. Louis and its individual members, the Superintendent and Acting Superintendent of Schools of said Board, and the District Superintendent of the districts within the metropolitan school district of the City of St. Louis in the exercise of the functions of the state which have been delegated to them by the laws of Missouri, are required to conduct and superintend the business relating to the public schools of the City of St. Louis in a manner consistent with the requirements of the Constitution and laws of the United States, and to implement the legitimate public policy of the State of Missouri to provide, furnish, and make available equal racially non-segregated, racially non-discriminatory educational opportunities for all regardless of race, creed, natural origin, color or sex, and to eliminate and prohibit segregated or separate schools or school districts on the basis of race, creed, or color; that the said Defendants are further obliged to report and recommend to the legislative body of the State or of the City remedies to rid the system of the observed imperfections in the operation of the schools in their district; and that the said Defendants are proper parties Defendants to this action.

14. Plaintiffs further state that by the past and present methods of maintaining and operating the metropolitan City of St. Louis school system, particularly through the five (5) district setup, the Defendants and their predecessors in office have effected and perpetuated racial segregation and discrimination in the operation of the public school system and public schools of the City of St. Louis

in violation of the rights secured to Plaintiffs by the Fourteenth Amendment to the Constitution of the United States, and Article One, Section 2 of the Constitution of Missouri;

15. That Defendants and their predecessors in office in the exercise of the delegated educational functions of the State of Missouri, have engaged in acts, practices, customs and usages which have had the natural, probable, foreseeable, and actual effect of incorporating into the public schools and the public school system of the metropolitan district of the City of St. Louis, the public and private residential racial segregation and discrimination practices of the State of Missouri and of the City of St. Louis in violation of the right of Plaintiffs not to be segregated on the basis of race in public schools and the school districts established and maintained by Defendants in the metropolitan school district of the City of St. Louis.

16. That Defendants and their predecessors in office, in the exercise of the delegated educational functions of the State of Missouri, have allocated and permitted to be allocated educational resources, including, but not limited to, funds, teachers, buildings, textbooks, materials and supplies, in a manner that has had the natural, probable, foreseeable and actual effects in the metropolitan school district of the City of St. Louis, of:

(a) Discriminating on the basis of race against black children attending the public schools within the City of St. Louis; and

(b) Establishing and maintaining the pattern of racially separate schools and a segregated school system in violation of the rights secured to Plaintiffs by the Fourteenth Amendment to the Constitution of the United States and the Constitution and laws of Missouri.

17. Plaintiffs further state that for years prior to 1954, the State of Missouri, through its Constitution and laws, the customs, policies, and practices of its instrumentalities, including, but not limited to, its school districts, mandated and enforced both public and private racial segregation, including, but not limited to, public school education, the effects of which persist in the affairs of Defendants in administering the public school system of the metropolitan district of the City of St. Louis, all of which had and continue to have the purpose and effect of denying equal educational opportunities and equal opportunities based on education, to black citizens and students by compelling the attendance of black students in segregated schools, and which denies to Plaintiffs and the class on whose behalf they sue, the equal protection of the laws guaranteed to them by the Fourteenth Amendment of the Constitution of the United States.

18. That Defendants and their predecessors in office since 1954, pursuant to a policy, practice, custom, and usage of racial discrimination denying Fourteenth Amendment rights, have by the devices, inter alia, of separate and racially discriminatory curriculum within the schools and school district boundaries, new school locations and construction, the assignment

of all children to schools within the metropolitan district of the City of St. Louis, and the assignment of teachers in the school system, have acted affirmatively to create, support, maintain and continue to support and maintain a dual biracial school system in the Metropolitan School District of the City of St. Louis which denies to black children equal education opportunities; and that Defendants have failed to fulfill their affirmative duty to establish and maintain unitary public schools.

19. Plaintiffs further state that the school boundaries and district boundaries within Defendants' school districts have resulted in excluding black children from the educational resources and facilities which would otherwise be available to them; that the school boundaries and district boundaries serve no bona fide educational goals, policies or practices which would not be served equally well by district configurations which do not result in the pattern of racial segregation in the public schools of the City of St. Louis; and

20. That the maintenance of the present school district boundaries and school boundaries, and other discriminatory policies and practices, customs and usages have the effect of denying to black children within the geographical boundaries of the metropolitan school district of the City of St. Louis their Fourteenth Amendment rights to equal educational opportunities and are supported by no compelling state interest in their continuation.

WHEREFORE, Plaintiffs pray that De-

fendants, their agents, employees, and all persons in active concert or participation with them be preliminarily and permanently enjoined and restrained to take forthwith all steps reasonably necessary to secure to Plaintiffs their rights to attend racially non-segregated and non-discriminatory schools in a non-segregated and non-discriminatory school system, including, but not limited to, the adoption and implementation by all Defendants of such goals, policies, practices, customs, and usages with respect to the operation of the public school system of the metropolitan district of the City of St. Louis as will secure to Plaintiffs equal opportunities in non-segregated and non-discriminatory schools in a non-segregated and non-discriminatory school district.

Plaintiffs further pray that this Court require the Defendants to prepare and submit for approval of this Court a plan for the operation of all the public schools within the Defendant Board of Education School system in conformity with the requirements of the Fourteenth Amendment, including, but not limited to, the non-discriminatory allocation of financial and physical resources; the establishment of school geographical boundaries and district geographical boundaries which are not racially identifiable, the location, construction and utilization of new buildings and the utilization of existing school buildings in a manner which are not racially identifiable; the assignment of pupil populations, staffs, faculties, transportation routes and activities which are not racially identifiable; and that the plan be effective at the earliest possible date.

Plaintiffs further pray that this Court allow them their costs herein, reasonable attorneys' fees, and such other, further or additional relief as to the Court may appear just and necessary.

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Barbara Goldsby

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APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,

Plaintiffs,

vs.

THE BOARD OF EDUCATION
OF THE CITY OF ST. LOUIS,
STATE OF MISSOURI, et al.,

Defendants.

CONSENT JUDGMENT AND DECREE

on this 24th day of December, 1975, the parties hereto having appeared by counsel, and having consented, in the interest of the settlement of this litigation, as well as in the interest of saving the time, burden and expense of further hearings, subject to the approval of the Court, to the making and entering of this Judgment, as per memorandum filed herein under the date hereof, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction of the subject matter of this class action and of the parties hereto.

2. This Judgment and Decree is made and entered upon the Stipulation of Facts as amended and supplemented and upon the consent of the parties.

3. Nothing herein contained shall be deemed to be an admission on the part of Defendants that the charges contained in Plaintiffs' Complaint, as amended, are true. However, notwithstanding the actions taken by the Board subsequent to Brown vs. Board of Education of Topeka, 347 U.S. 483, as of this date hereof, segregation is present, as a matter of fact, in the Public School System of the City of St. Louis, in the particulars itemized in said Stipulation of Facts.

4. Defendants, their agents, officers, employees and successors, and all those in active concert and participation with them shall be enjoined and prohibited from discriminating on the basis of race or color in the operation of the School District of the City of St. Louis, and shall be required to take affirmative action to secure unto Plaintiffs their right to attend racially nonsegregated and nondiscriminatory schools, and Defendants will afford unto Plaintiffs equal opportunities for an education in a non-segregated and non-discriminatory school district, and shall be required to take the affirmative action hereinafter set forth.

5. With regard to the personnel of the St. Louis public schools, the Defendants are directed and ordered to take the following measures which are necessary or proper in order to reduce racial segregation:

a) Effective before the beginning of the 1976-77 school year, defendants shall have planned, developed and carried out a program through volunteers and, if necessary, through mandatory appointments and assignments, to provide a minimum of two regular classroom teachers

and no less than 10% of the minority teachers and other staff of either race in each school of the system.

b) The minimum percentages provided for in the preceding paragraph shall be increased by Defendants to no less than 20% of the minority teachers and other staff of either race in each school of the system before the beginning of the 1977-1978 school year, and to 30% of the teachers and other staff before the beginning of the 1978-1979 school year.

6. The measures required to be taken by the Board under the provisions of paragraph 5 hereof shall be taken notwithstanding any already signed and approved contract; and the tenure or seniority of teachers or other certified personnel shall not be used to excuse or justify any lack of compliance with the provisions hereof.

7. Employees of the Board, whether certificated or not, shall not be discriminated against as to hiring, rehiring, promotion, dismissal, suspension or assignment on the ground of race or color, all subject to the procedural provisions of Title VII of the Civil Rights Act of 1964, as amended.

8. To the extent which is consistent with the proper operation of the school system as a whole, Defendants shall locate any new schools, lease new classroom facilities or substantially expand existing schools with the objective of eradicating the effects of past and present segregation in the public schools of the City of St. Louis.

9. Before the beginning of the 1977-

1978 school year, Defendants shall make a study of realignments of all elementary feeder schools to the academic high schools for the purpose of reducing racial isolation and segregation at the said high schools, and shall submit a report thereon to the Court, on or before January 15, 1977, with implementation to begin September 1977.

10. The Defendants are hereby ordered to make a study and report to the Court on or before May 1, 1976 as to whether or not the following items will assist in eliminating or reducing segregation:

a) Establishing elementary magnet schools with specialized curriculum, having an open enrollment by application.

b) Establishing high schools for the study of the visual and performing arts, for the study of mathematics and physical and natural sciences, and other subject areas, such schools having open enrollment by city-wide application.

c) Recognizing that the above measures are basically experimental in nature, a study of the feasibility of curriculum improvements or other changes that should be instituted in the system as a whole shall be undertaken for the purpose of increasing the quality of education throughout the system, all within the context of reducing racial isolation in the schools and with the goal of desegregating the school system. A report shall be made to the Court by May 1, 1976, with implementation beginning with the school year 1976-1977.

11. Defendants are required to file with the Court, within sixty days from the opening day of the 1976-1977 school year a report setting forth the following information:

a) Tabulation by race of the enrollment in each school of the district.

b) List of each student, by name and address, who applied for transfer stating whether the application was granted, or, if not, the reason for the denial.

c) Tabulation of teachers by race for each school, listing the assigned grade or grades, and the vacancies which have been filled by the hiring of teachers from outside the system at each of the schools.

12. Defendants shall simultaneously mail copies of all reports filed with the Court to counsel for the Plaintiffs. Plaintiffs' counsel shall be advised as to actions undertaken by the Defendants in compliance with this Judgment.

13. Costs shall be taxed against the Defendant Board of Education of the City of St. Louis and a reasonable attorneys' fee and expenses will be allowed against it and in favor of counsel for the Plaintiffs.

14. Jurisdiction is retained for the purpose of enabling any of the parties to this Judgment to apply to this Court at any time for such further orders and directives as may be necessary or appropriate for the construction or carrying out of this Judgment.

Dated this 24th day of December, 1975.

Judge James H. Meredith

APPENDIX 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,

Plaintiffs,

vs.

THE BOARD OF EDUCATION
OF THE CITY OF ST. LOUIS,
STATE OF MISSOURI, et al.,

Defendants.

COMPLAINT IN INTERVENTION

Come now Intervening Plaintiffs, Adams, et al., and for their Complaint in Intervention against Defendant, Board of Education of the City of St. Louis, et al. and United States of America, allege as follows:

1. This Court has jurisdiction of this action pursuant to 28 U.S.C. 1343(3); 1346; and 1361.

2. Venue is appropriate in this Court based on 28 U.S.C. 1391 and 1402.

3. The Defendants are: the United States of America; the Secretary of Health, Education, and Welfare of the United States of America; Board of Education of the School District of the City of St. Louis, Missouri; the individual members of the Board of Education of the School District of the City of St. Louis, Missouri; the Superintendent of the School District of the City of St. Louis, Mis-

souri; the District Superintendents of the City of St. Louis, Missouri.

4. Defendant, Board of Education of the School District of the City of St. Louis, Missouri, the individual members of the said Board, the Superintendent of the said School District, and the District Superintendents of the School District (hereinafter jointly referred to as "Board of Education") operate, pursuant to the laws of the State of Missouri, a school system within the geographic confines of the City of St. Louis.

5. The United States of America, through the Department of Justice and the Department of Health, Education, and Welfare, is charged, by statute, with certain responsibilities to insure and guarantee that school districts within the United States are operated by a nondiscriminatory method.

6. That between June 30, 1954 and January 1, 1977, Defendant, Board of Education, operated a school system which was constitutionally unitary and nondiscriminatory.

7. That subsequent to January 1, 1977, Defendant, Board of Education, attempted, and is currently attempting, to assign pupils attending the schools operated by the Board of Education to specific elementary, secondary, and special schools based upon their race.

8. That on April 22, 1977 Defendant Board of Education was authorized and ordered to "proceed with the development of its Magnet School Program and Specialized High Schools as set forth in its proposal

and this may be effective with the beginning of the September, 1977 school year."

9. That subsequent to April 22, 1977, Defendant, Board of Education, submitted an application to Defendant, United States of America, specifically to the Department of Health, Education, and Welfare, for funding of said Magnet Schools and other Specialized High Schools under the provisions of the Emergency School Aid Act, 20 U.S.C. 1601, et seq., for financial assistance in the expansion and maintenance of said schools.

10. That subsequent to the application of Defendant, Board of Education, officials, officers, employees, and representatives of the United States of America, specifically those associated with the Department of Health, Education, and Welfare, advised the Defendant, Board of Education, that the said application would not be granted unless and until the Defendant, Board of Education, agreed to unlawfully and unconstitutionally discriminate against certain citizens residing within the geographic boundaries served by the Defendant, Board of Education.

11. That the illegal and unconstitutional acts of discrimination required by Defendant, United States of America, included the following:

a) Students applying for admission to Magnet Schools who had previously been attending nonpublic schools would not be processed until all applications from students previously attending public schools had been processed and approved.

b) Students applying for admission to Magnet Schools who had previously been attending nonpublic schools would be limited in their admission on a basis of one white student for every five black students.

c) That students applying for admission to Magnet Schools from the regular public schools would be allowed on a basis of one white student for every one to three black students.

d) That students who are to be reassigned to a school other than the school closest to their residence to relieve overcrowding would be relocated to a school where the opposite race of the reassigned student was in the majority to the extent that space was available in such school, and only when all such space has been utilized may students be transported or reassigned to schools closer to the place of their residence of predominantly the same race.

12. That the acts of the United States concerning separate treatment of students applying for enrollment to Magnet Schools and Specialized High Schools is in violation of the First and Fourteenth Amendments of the United States Constitution; 42 U.S.C. 1981, 1983, and 1985(3); 42 U.S.C. 2000C; 42 U.S.C. 2000C-(6) and 2000C-(8); 20 U.S.C. 1601, et seq., particularly sections 1618, 1652, and 1656.

13. That the actions of the United States of America constitute a conspiracy and an attempt to coerce the Defendant, Board of Education, to violate Article IX, Section 1(a) of the Missouri Constitution,

which requires, "free public schools for the gratuitous instruction of all persons in this state . . ."

14. That the actions of the United States of America constitute an attempt and conspiracy to thwart, subvert, and violate the lawful order of this Court, dated April 22, 1977 directing Defendant, Board of Education, to maintain, expand, and implement its program of Magnet Schools and Specialized High Schools.

WHEREFORE, Intervening Plaintiffs, Adams, et al., pray an order of this Honorable Court:

1. Declaring that subsequent to 1954, Defendant, Board of Education, operated a constitutionally unitary and nondiscriminatory school system.

2. That the Defendant, Board of Education's, attempts to assign pupils to specific schools to "improve racial balance" is discriminatory in that it attempts to assign pupils to specific schools based upon their race.

3. That the actions of the United States in withholding funds from Defendant, School Board, are in violation of the First and Fourteenth Amendments of the United States Constitution, Sections 1981, 1983, 1985(3), 2000C, 2000C-(6), 2000C-(8) of Title 42 U. S. Code, and Sections 1601, et seq., particularly Sections 1618, 1652, and 1656 of Title 20 of the United States Code.

4. That the Intervening Plaintiffs' attorneys be allowed a reasonable attorney's fees.

5. Such other orders as are appropriate.

FORDYCE & MAYNE

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and

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APPENDIX 5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,

Plaintiffs,

vs.

THE BOARD OF EDUCATION
OF THE CITY OF ST. LOUIS,
STATE OF MISSOURI, et al.,

Defendants.

DEFENDANTS' ANSWER TO PLAINTIFFS'
ADAMS, ET AL. COMPLAINT IN INTERVENTION

Comes now Defendants, Board of Education of the City of St. Louis, et al., and for their answer to Plaintiffs' Adams, et al. Complaint in Intervention states as follows:

1. Defendants make no answer to the allegations contained in paragraph 1 of Plaintiffs' Adams Complaint In Intervention for the reason that said allegations express legal conclusions.

2. Defendants make no answer to the allegations contained in paragraph 3 of Plaintiffs' Adams Complaint In Intervention for the reason that said allegations express legal conclusions.

3. These Defendants admit that Board of Education of the City of St. Louis, the individual Board members of the Board of

Education of the City of St. Louis, Superintendent of Schools of the School District of the City of St. Louis and the various District Superintendents of the City of St. Louis are defendants to this action.

4. Defendants admit the allegations contained in paragraph 4 of Plaintiffs' Adams Complaint In Intervention.

5. These defendants make no answer to the allegations contained in paragraph 5 of Plaintiffs' Adams Complaint In Intervention for the reason that said allegations are not directed to these defendants but are directed to the alleged defendant United States of America which was made a party plaintiff to this action by Order of this Court dated August 10, 1977.

6. For their answer to the allegations contained in paragraph 6 of Plaintiffs' Adams Complaint In Intervention, defendant, Board of Education, admits that from June 30, 1954 to the present it has operated a school system which is constitutionally unitary and non-discriminatory.

7. Defendants deny each and every allegation contained in paragraph 7 of Plaintiffs' Adams Complaint In Intervention.

8. Defendants admit the allegations contained in paragraph 8 of Plaintiffs' Adams Complaint In Intervention.

9. Defendants admit the allegations contained in paragraph 9 of Plaintiffs' Adams Complaint In Intervention.

10. Defendants make no answer to the allegations contained in paragraph 10 of Plaintiffs' Adams Complaint In Intervention

for the reason that said allegations are not directed to these defendants but are directed to the alleged defendant United States of America which was made a party plaintiff to this action by Order of this Court dated August 10, 1977.

11. Defendants make no answer to the conclusory allegations found in paragraph 11 of Plaintiffs' Adams Complaint In Intervention and deny each and every allegation except as specifically stated in these defendants answers to subparts 11(a), 11(b), 11(c), and 11(d):

(a) Defendants deny all of the allegations contained in paragraph 11(a). Defendants further state that applications of previously non-public school students are processed simultaneously with public school students according to the date upon which the various applications have been filed with defendants.

(b) Defendants deny all of the allegations contained in paragraph 11(b). Defendants further state that only those previously non-public school students who, having been processed simultaneously with public school students, are not eligible for enrollment in the magnet schools according to agreed upon criteria may nevertheless be enrolled in the magnet schools on the ratio of one white non-public school student for every five black students.

(c) Defendants deny all of the allegations contained in paragraph 11(c). Defendants further state that the goal of the magnet school system is to achieve a racial balance at each magnet school of fifty percent black and fifty percent

white but that a ratio of up to seventy percent black/thirty percent white is acceptable under the program.

(d) Defendants admit the allegations contained in paragraph 11(d).

12. Defendants make no answer to the allegations contained in paragraph 13 of Plaintiffs' Adams Complaint In Intervention for the reason that said allegations are not directed to these defendants but are directed to the alleged defendant United States of America which was made a party plaintiff to this action by Order of this Court dated August 10, 1977, and for the reason that the allegations contained therein express legal conclusions.

13. Defendants make no answer to the allegations contained in paragraph 13 of Plaintiffs' Adams Complaint In Intervention for the reason that said allegations are not directed to these defendants but are directed to the alleged defendant United States of America which was made a party plaintiff to this action by Order of this Court dated August 10, 1977, and for the reason that the allegations contained therein express legal conclusions.

14. Defendants make no answer to the allegations contained in paragraph 14 of Plaintiffs' Adams Complaint In Intervention for the reason that said allegations are not directed to these defendants but are directed to the alleged defendant United States of America which was made a party plaintiff to this action by Order of this Court dated August 10, 1977, and for the reason that the allegations contained therein express legal conclusions.

15. Except for those matters specifically admitted herein, defendants deny each and every allegation contained in Plaintiffs' Adams Complaint In Intervention.

WHEREFORE, having fully answered defendants pray that the Complaint In Intervention filed by plaintiffs, Adams, et al., be dismissed and for its costs herein expended.

LASHLY, CARUTHERS, THIES, RAVA
& HAMEL,
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APPENDIX 6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Craton Liddell, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	72-100C (1)
	)	
The Board of Education of the City of St. Louis, State of Missouri,	)	
	)	
Defendants.	)	

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MEMORANDUM

This matter was tried to the Court. The Court makes the following findings of fact and conclusions of law:

I. CASE HISTORY AND PROCEDURAL POSTURE

This is a school desegregation case involving the public schools of the City of St. Louis, Missouri. On February 18, 1972, plaintiffs, who are representatives of the Concerned Parents of North St. Louis, filed their initial complaint. Plaintiffs represent school age children and their respective parents and next friends residing in the metropolitan school district of the City of St. Louis. Plaintiffs (hereinafter Liddell, et al.), each of whom is black, brought this action as a class action on behalf of themselves and all other school age children and their parents in that area. Plaintiffs named as defendants the Board of Education of the City of St. Louis, State of Missouri, and its members (hereinafter Board), in their official capacities, as well as the then Acting Superintendent of Schools and the District Superintendents of the Board of Education of the City of St. Louis, all in their official capacities.

In their initial complaint, Liddell, et al., alleged jurisdiction under 28 U.S.C. §§1343(3) and 1343(4), 28 U.S.C. §2201, 42 U.S.C. §§1983, 1988, and 2000d, and the Fourteenth Amendment to the Constitution of the United States.

Liddell, et al., alleged that the defendants, by their methods of maintaining and operating the school system, have perpetuated racial segregation and discrimination in the St. Louis City School system. Liddell, et al., further alleged that the

defendants have so acted as to incorporate segregated residential patterns into the schools, to allocate educational resources in a discriminatory manner, and to perpetuate a dual biracial school system, thus failing in their affirmative duty to establish and maintain unitary public schools.

Liddell, et al., prayed that defendants be enjoined to take all steps reasonably necessary to establish a nonsegregated, nondiscriminatory school system, and be required to submit a plan for the allocation of educational resources, geographical boundaries and transportation routes, as well as staff and pupil assignments which will satisfy the Fourteenth Amendment requirements. In addition, Liddell, et al., asked for costs, attorneys' fees, and other relief.

Defendants answered this complaint, denying the material allegations, on April 19, 1972.

On October 3, 1973, after discovery proceedings by the parties, the Court allowed this action to be maintained as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, and notice of the pendency of the class action was duly published. The Court also, by public notice, invited other interested parties to intervene on or before December 1, 1973.

On October 30, 1973, defendants filed a motion to join as additional parties defendant the Governor, the Attorney General, the Commissioner of Education of the State of Missouri, the State Board of Education of Missouri, the St. Louis County Superintendent of Education, and the twenty school districts in St. Louis County which

constitute the first two tiers of school districts adjoining the defendant school district of the City of St. Louis. The motion was denied on December 1, 1973.

On February 28, 1974, the Court requested that the parties file a written Stipulation of Facts. This was done on June 7, 1974. Exhibits filed with the stipulation have been supplemented to provide statistical material for the school years up to 1975-76.

On June 21, 1974, after proper publishing of notice to prospective members of the class and other interested parties, the Court, noting that no party had requested intervention, ordered that the cause might continue as a class action.

On December 24, 1975, the parties to this action entered into a consent judgment and decree which the Court approved. (The consent decree is set out in full in Appendix B.) The consent decree was based on a denial by the Board of Education that plaintiffs' charges were true, and a recognition that there was racial imbalance in the school system despite the Board's efforts to integrate the system.

The Board agreed to take further affirmative action in order to overcome the effect of residential patterns and to alleviate racial imbalance in the City schools. The Board agreed to progressively increase the percentage of minority teachers in every school, so that, in 1976-77, 10%, in 1977-78, 20%, and in 1978-79, 30% of the teachers at each school would be of the race that was in the minority at that particular school. This was to be done by voluntary transfers if possible, but otherwise by mandatory assignment despite any contracts,

tenure, or seniority agreements to the contrary. This goal has been substantially met even though all parties did not agree to the continuation of the program.

In addition, defendants agreed to strive to increase integration by their manner of providing classroom space, to study realignments of feeder schools, to consider elementary magnet schools and special subject high schools, both with city-wide enrollments, and to attempt to improve the curriculum, all in an effort to relieve the residence-based racial imbalance in the City schools.

On December 24, 1975, the Court ordered publication of the consent decree and notice was ordered to all interested parties that they might object to the consent judgment by filing a statement before Friday, January 16, 1976.

On January 16, 1976, objections to the consent decree were filed by the Missouri State Teachers Association, St. Louis District; the St. Louis Teachers Union, Local 420, American Federation of Teachers; and the St. Louis Teachers Association.

A group of black students and their parents and next friends, together with the National Association for the Advancement of Colored People, Caldwell, et al. (hereinafter NAACP), also filed their objections and applied to intervene as representatives of the class.

Both plaintiffs[1/] and defendants objected to the intervention of the NAACP and moved to dismiss the objections and motion to intervene.

Liddell, et al., further argued that because of their intimate knowledge of the particulars of the St. Louis City Schools situation, they were better able to structure solutions on a local level than a bureaucratic national organization like the NAACP would be.

After a hearing on January 23, 1976, all objections and applications for intervention were denied by this Court. Only the NAACP appealed from that order.

On December 13, 1976, the U.S. Court of Appeals for the Eighth Circuit reversed the order of this Court and allowed the appellants' motion to intervene. Liddell vs. Caldwell, 546 F.2d 768 (8th Cir., 1976). The only issue before the Eighth Circuit was the right of the NAACP to intervene. As the appeal was interlocutory, the Court of Appeals did not consider the merits of the consent decree.

On January 28, 1977, the appeals court denied the defendants' motion for a stay of mandate pending petition for certiorari, and said that the consent decree, although interlocutory as to remedy, still obliged the parties to go forward with implementation of a desegregation plan and to make "'every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation.'" Davis vs. Board of School Comm'rs. of Mobile County, 402 U.S. 33, 37 (1971).

On February 25, 1977, this Court granted leave to Caldwell, et al., or the NAACP, to intervene and made them parties to this cause, "adopting the original complaint as filed February 18, 1972, and the stipulation of fact, filed by the original

parties herein on June 7, 1974, in the same manner and with like effect as if named as original parties to this cause."

By submission of reports on February 28 and March 10, 1977, the defendants filed their plan for desegregation, pursuant to the requirements of the consent decree. The measures proposed in these reports include (i) the establishment of fully integrated junior high schools, (ii) expansion of the magnet school program, including the establishment of a new magnet high school, (iii) expansion of the integrated enrollment in two alternative high schools, Metro and O'Fallon Technical, (iv) emphasis on permissive transfers to improve desegregation, (v) adjustment in transportation to improve desegregation, (vi) in-service training and other collateral services, (vii) an educational park, and (viii) a metropolitan remedy. A financial report, filed on March 15, 1977, set forth the estimated costs for the programs contemplated, and the projected cost allocation between the Board and the Department of Health, Education and Welfare (HEW).

On March 28, 1977, the United States Department of Justice was allowed to intervene as amicus curiae, having declined to intervene as a party. Subsequently two groups of parents and pupils representing white students in the St. Louis public schools, identified as the Involved Citizens Committee (and also as Puleo, et al.) and the Concerned Parents for Neighborhood Schools (Adams, et al.), and the City of St. Louis were allowed to appear as amici curiae.

In May, 1977, Liddell, et al., the NAACP, and the United States Department of Justice submitted their separate alterna-

tive plans for desegregation under the consent decree. The NAACP also moved to enforce its own desegregation plan by an injunction.

In its order of July 13, 1977, the Court noted that the only part of the Board's plan to which all parties agreed was the magnet school program. Therefore the defendants proceeded with that program. As it would be inconsistent with due process to direct that the contended portions of the plan be implemented immediately, without a hearing, the remainder of the plan could not be implemented in 1977. The Court ordered a July 25, 1977, hearing on the proposed plans. Therefore, the motions of intervening plaintiffs NAACP and of amicus curiae United States Department of Justice, requiring immediate implementation of their own plans, were denied, and the subsequent reversal of position and plans, were denied, the subsequent reversal of position and separate motions by intervening plaintiffs NAACP and the United States Department of Justice requesting immediate implementation of the Board's plan were denied so that an orderly hearing might be held. The defendants' motion to dismiss the alternate plans of Liddell, et al., the NAACP, and the United States was denied.

At that time, in the light of the recent Supreme Court cases, Milliken vs. Bradley, 433 U.S. 267 (June 27, 1977); Dayton Board of Education vs. Brinkman, 433 U.S. 406 (June 27, 1977), and School District of Omaha vs. U.S., 433 U.S. 667 (June 29, 1977), it became necessary for this Court to determine whether, in fact, there had been any constitutional violation by the defendants. There was no determination of a constitutional violation made in

the Stipulation of Facts or in the consent decree.

A trial to this Court was to determine the following: whether there has been any constitutional violation on the part of defendants, and, if so, what is its nature and extent. If a constitutional violation were found, the Court would consider implementing remedies, matching the extent and scope of any remedies found necessary to the extent and scope of any violation which may be found.

By order of July 14, 1977, the trial date was postponed to October 17, 1977, in order to permit the State defendants to prepare for trial.

Before commencement of the trial, the United States Department of Justice (hereinafter Department),[2] Puleo, et al., or the Involved Citizens Committee, Adams, et al., or the Concerned Parents for Neighborhood Schools, and the City of St. Louis[3] were allowed to intervene as parties plaintiff. The State of Missouri, the Missouri State Board of Education, and the State Commissioner of Education were made parties defendant.

This case was tried to the Court in thirteen trial weeks at five different settings between October 17, 1977, and May 26, 1978. During the 13 weeks of trial, 39 witnesses testified in person and one by deposition. About 1,200 exhibits were received in evidence. The trial proceedings covered 7,115 pages of transcript. The trial addressed both issues of liability and remedy.

II. FINDINGS OF FACT.

A. Stipulation of Facts.

The Stipulation of Facts was filed by the original parties, Liddell, et al., and the Board, on June 7, 1974, pursuant to a February 28, 1974, request by the Court. This request came after the Court had, by public notice, invited any interested parties to intervene in this class action.

The Stipulation of Facts consists of 50 pages of description and facts concerning the St. Louis public schools to which the original parties agreed and are bound.

Subsequent to the filing of the Stipulation of Facts, other parties have intervened as parties plaintiff.

When Caldwell, et al., (NAACP), sought to intervene in the class action, they did not attempt to "assert a right to relitigate or undo the factual stipulations of the parties." Liddell vs. Caldwell, 546 F.2d 768, 770 (8th Cir. 1976). The Eighth Circuit described the Stipulation of Facts in the following manner: "the stipulation appears to fairly set forth the basic history and statistics of the St. Louis school system." Id. at 770.

The February 25, 1977, order of this Court granting the application for intervention of Caldwell, et al., (NAACP), specifically provided that the intervenors adopt the Stipulation of Facts "in the same manner and with like effect as if named as original parties." This Court also held in the order of July 13, 1977, that all parties are bound by the Stipulation of Facts.

B. The Board of Education.

The original defendants are the Board of Education of the City of St. Louis, which is a metropolitan school district, a body corporate, created and governed by the statutes of the State (hereinafter referred to as the Board), and the following persons who are sued in their respective official capacities at the time the suit was filed: the twelve members of the Board, the Acting Superintendent of Schools, and the five District Superintendents of the districts into which the school system of the City is administratively divided.

The Board has the supervision and government of the public schools and public school property within said district; and in its name the Board may sue and be sued; purchase, receive, hold and sell property, and do all things necessary to accomplish the purpose for which the school district is organized.

Under the laws of Missouri, all titles to property granted to the City of St. Louis by the United States or the State of Missouri for school purposes, and the title to all school lands and other property of every kind within the City of St. Louis are vested in the Board.

The laws of Missouri require the Board to organize annually by electing a president, vice-president, and secretary from its members, and to appoint a superintendent of schools; and that should the superintendent of schools be unable to perform his duties as required by law, or if the office of superintendent becomes vacant, the Board shall appoint an acting superintendent to serve during the period of disability of the superintendent or the vacancy in the said office.

The laws of Missouri vest the Board with general and supervising control, government and management of the public schools and public school property in said City of St. Louis, and generally with all powers in the administration of the public school system in said City, inter alia, the following:

(a) to appoint the officers, agents and employees it deems necessary and proper and fix their compensation; (b) to make, amend and repeal rules and bylaws for the government, regulation and management of the public schools and school property in said City; (c) to examine, qualify and employ teachers; (d) to purchase and hold all property, real and personal, deemed by it necessary for the purpose of public education; (e) to build and construct improvements for such purposes, and sell the same; (f) to levy taxes authorized by law for school purposes; and (g) to provide for the gratuitous transportation of pupils to and from schools in cases where by reason of special circumstances pupils are required to attend schools at unusual distances from their residences.

Furthermore, as provided by statute, the Board is subject to rules promulgated by the State Board of Education on a number of subjects, including accreditation, classification and requirements for the schools of each class, and is supervised by the State Board in some respects.

Pursuant to the laws of the State of Missouri, the Board appointed a Superintendent of Schools, and during his leave of absence in the school year 1971-72, an Acting Superintendent of Schools was appointed for that year. These officials have statutory authority (subject to the

approval of the Board of Education of the City of St. Louis, or under regulations made by the State Board of Education), inter alia, as follows:

(a) to appoint a treasurer;

(b) to appoint a commissioner of school buildings;

(c) to appoint associate and assistant superintendents;

(d) to prepare and administer the annual budget of the school system;

(e) To have general supervision of the schools system, including its various departments and physical properties, course of instruction, discipline and conduct of schools, textbooks and studies; and

(f) to have general supervision of all school buildings, apparatus, equipment and school grounds and of their construction, installation, operation, repair, care and maintenance.

The boundaries of the School District of the City which is administered by the Board are coterminous with those of the City of St. Louis itself. These boundaries, which comprise 61.37 square miles, have remained the same since their establishment by the legislature in 1876. Compare §5271, R.S.Mo. 1879 with §46.145, R.S.Mo. 1969. The City of St. Louis is also a county but separate and distinct from St. Louis County which adjoins the City of St. Louis.

C. State of Missouri and the State Board of Education.

Prior to 1954, the Missouri Constitution provided separate schools for black and white pupils. Art. IX, §1(a), Mo. Constitution, 1945. Several state statutes served to implement that provision by providing for the distribution of separate school moneys (§161.020, R.S. Mo.), separate enumerations and the transfer of black pupils between districts (§§163.130, 164.030, 165.117, 165.297, R.S.Mo.). The legislature acted promptly in response to Brown vs. Board of Education of Topeka, 347 U.S. 483 (1954). State funding for separate black and white schools was repealed at the next regular session of the General Assembly. Laws of 1955 at 520. The remaining statutes were repealed in 1957. Laws of 1957 at 452.

In 1961, laws were enacted prohibiting discrimination in housing (Chapter 213, R.S.Mo.), employment (Chapter 296, R.S.Mo.), and public accommodations (Chapter 314, R.S.Mo.). The latter chapter by its terms is applicable to schools. Enforcement of these laws was vested in the Missouri Commission on Human Rights. No other laws were enacted, nor were any laws amended which expressly or by implication required or permitted school districts to make distinctions between black and white pupils, or which encouraged districts to resist the removal of vestiges of the dual system within their districts.

The Missouri State Board of Education has constitutional and statutory authority to "supervise instruction" in the public schools of Missouri (Art. IX, §2(a), Mo. Constitution, 1945), and to otherwise effectuate the educational policies of the

State. §161.092, R.S.Mo. 1969 (as amended, Cum. Supp. 1975). The State Board distributes state aid on an annual basis to local school districts pursuant to a formula taking into account, inter alia, numbers of pupils served and local tax effort. §163.031, R.S.Mo. 1969 (as amended, Supp. 1977).

State aid may be withheld only if a school district fails to: (a) operate its schools for a minimum number of days, (b) maintain adequate financial records, (c) levy a minimum property tax, or (d) compute average daily attendance as prescribed by law. §163.021, R.S.Mo. 1969 (as amended, Cum. Supp. 1975).

The State Board has statutory power to provide state aid in the transportation of students and to approve all school bus routes traveled by school buses. §163.161, R.S.Mo. 1969 (as amended, Supp. 1977).

St. Louis, as a "metropolitan district," is empowered to transport pupils to and from schools "where by reason of special circumstances pupils are required to attend schools at unusual distances from their residences." §162.621(8), R.S.Mo. 1969.

All other districts are subject to statutory mileage criteria. §167.231, R.S.Mo. 1969 (as amended, Supp. 1977).

The determination of pupil assignments and transfers, the drawing of attendance zones and feeder patterns, the selection of sites for schools and additions, and the assignment of faculty are within the discretion of local school officials, and are not shown to be routinely reported to the State.

The State Board is responsible for approving applications from the St. Louis Board for aid under Title I of the Elementary and Secondary Education Act of 1965 and such aid is also subject to final approval by the Department of Health, Education and Welfare (HEW).

The evidence shows that the State of Missouri effectively removed all barriers at the state level to the desegregation of the schools. There is no showing that any actions of the State, the State Board of Education, or the Commissioner of Education of the State of Missouri had a segregative effect or in any way hindered desegregation.

D. PRE-BROWN CONDITIONS.

1. Dual school system.

Prior to the decision in Brown vs. Board of Education of Topeka, 347 U.S. 483 (May 17, 1954), the public schools of the State of Missouri were segregated pursuant to state constitutional and statutory law. As of that time the public schools maintained and operated by the Board had a total enrollment of 90,327 pupils, comprising the following:

		White	Black
17,216	High Schools	11,921	5,295
72,259	Elementary Schools	46,674	25,585
852	College	547	305
90,327	Total	59,142	31,185

Over 30,000 children in St. Louis attended private and parochial schools, a relatively low percentage of that number being black.

Prior to 1954 the Board operated seven (7) high schools limited to white students. These schools were Beaumont, Central, Cleveland, McKinley, Roosevelt, Soldan, and Southwest high schools. There were two (2) high schools limited to black students. These schools were Sumner and Vashon. There were also two vocational or technical schools, one black, and one white.

Under the dual school system white students were assigned to schools on the basis of proximity to their homes. Black children did not have neighborhood schools, but were instead bused to the black schools at the core of the City. Separate, overlapping attendance zone lines were maintained for black schools and white schools. This resulted in some extremely large attendance zones for black schools.

2. Discriminatory laws.

Segregation was eliminated in the following public facilities and community services in the indicated years. The Catholic schools were desegregated in 1947. Nondiscrimination was made the law in City employment in April, 1946. White teachers were employed in black segregated schools prior to 1955. The St. Louis area ball parks were desegregated and St. Louis University was integrated in 1944. Washington University was integrated in 1947. The St. Louis theaters were desegregated in 1951. The St. Louis recreational facilities were desegregated in 1950, and the public transit system was desegregated in 1953.

In 1918 an attempt was made to impose segregated housing on the City's population. Over the opposition of City officials, a segregated housing ordinance

was passed by initiative petition. This ordinance was immediately struck down by the courts and was never enforced. Nevertheless, as of 1954, segregation in housing existed due to private discriminatory practices and actions and policies of the Federal Housing Administration.

3. Demographics.

A quick review of St. Louis demographics prior to 1954 reveals a tendency of certain groups of common race, national origin, religion, and economic means to settle in certain areas of the City. This tendency has resulted in some homogeneous residential patterns despite the heterogenity of the population of St. Louis as a whole. Although grouping in homogeneous residential patterns was evident prior to 1954, all groups remained highly mobile. Pockets of blacks were residing throughout St. Louis, although much of the black population lived in the area immediately north of the downtown area. The tremendous mobility of the St. Louis population was to be shown in demograhic changes after 1954.

The population of St. Louis grew until 1950, when the population was 856,796. The racial composition in St. Louis was then 82.1% white and 17.9% black. In 1950, the white population in St. Louis had declined by 4,253 from 707,283 whites in 1940. White attendance in the St. Louis public schools had also declined as of 1950.

4. Board activities.

The St. Louis Board of Education anticipated the outcome of the Brown decision and in 1953 began to prepare for desegregation.

By the time the Brown decision was handed down a number of steps had been taken by the Board, including: interracial activities for principals, teachers, and students; introduction of teaching materials portraying contributions of different ethnic groups to American life; comprehensive programs to improve the teaching of human relations in the schools; working with church groups, civil rights groups and other community organizations to prepare the community for desegregation and to obtain community support for desegregation; and arrangements to familiarize Board members, school officials and community leaders with the experience of a desegregated public school system. The pre-Brown activities of the Board also included the preparation of plans for the desegregation of the school system. The administrative staff of the Board began preparing a desegregation plan for implementation as soon as the Supreme Court acted.

This anticipatory work by the Board was praised at the time of Brown in that it made possible an early completion of the integration program for St. Louis. Irving Dilliard, chief editorial writer for the St. Louis Post-Dispatch, made the following comments on the Board's efforts in his editorial of May 19, 1954:

> "Ready acceptance in St. Louis is indicated by the reception of the [Brown I] decision here. Much to its credit, the Board of Education has anticipated the result and has in hand plans for developing a single school system. It can be hoped that this program is already far enough along on paper that it can be completely worked out and put

into effect next September. Three months is a substantial period. Accommodation of the ruling through the summer vacation season would be a splendid achievement for the second largest city in the country (after Baltimore) with a segregated school system."

E. 1954-56 Desegregation Plan.

On June 30, 1954, the Attorney General of the State of Missouri ruled that the provisions of the Constitution and laws of Missouri requiring segregation were superseded by Brown and were unenforceable. By that time, to wit, on June 22, 1954, the Board had already adopted a three step program for desegregation of the St. Louis public schools. The first step provided for desegregation at the junior college, teachers college level and in those classes which provided services on a city-wide basis. This first step was completed by September 1954.

The second step provided for desegregation of all high schools (except for the technical high schools) and also for desegregation of the adult education program. The third step provided for desegregation of the two existing technical high schools and all regular elementary schools. The plan was implemented over a two year period, from 1954 to 1956.[4]

The three point program eliminated race as a required criterion in determining eligibility to enroll in any public school of the system. After the adoption of this program, students were assigned to the schools in accordance with the following general principles to govern the integra-

tion process for students, which were adopted by the Board at the said meeting of June 22, 1954:

> a. The areas to be served by each elementary and each secondary school will be established by new boundaries. In drawing these boundaries, the purpose will be to provide the best use of the facilities of a given school by the students living in the area of that school.
>
> b. These boundaries will provide each school with a district which it will serve. Students must attend school in the district in which they live, with the following exceptions:
>
> > (1) The proper school authorities may transfer students from one district to another to relieve overcrowding.
> >
> > (2) Students already enrolled in a school, but not residents in its new district may, but are not required, to continue at that school until they graduate. This privilege will be granted, however, only if the particular school is not overcrowded.

For the accomplishment of these objectives, IBM cards were prepared for city blocks showing the number of students without any consideration of race or color. All reference to race or color was eliminated in the records of the St. Louis Public School System from 1954 until 1962,[57] when the first racial count was taken pursuant to the recommendation of the U. S. Commission on Civil Rights.

The new attendance boundaries for elementary schools were drawn by a high level black administrator, James Armstrong Scott, who used the following procedure:

a. All principals of all elementary schools were required to send the grades and residence addresses of each of their students to a central office, where the information was reduced to IBM cards, which were then sorted by the city block on which each of the students resided.

b. Mr. Scott was then supplied with a separate sheet of paper for each city block, on which sheet was printed the number of public school students residing on that block and the grades which they attended. There was no other information on the sheet. The names, ages, race, and home addresses of the children were all deleted.

c. Attendance boundaries were then drawn for each school, using as the criteria only proximity to the school building and building school capacity, giving consideration for natural

barriers such as major thoroughfares and distance.

Mr. Scott was instructed "to do the whole job" and to rely on the following factors alone:

> "To draw the lines objectively by the use of IBM cards and to decide each district on the - in terms of building capacity, that is if it's a five hundred school which would hold five hundred children. And on distance, so that the children would not have to go too far. And on the basis of safety, so that they wouldn't have to cross dangerous spots. And in the case of some, on the basis of transportation because even with the best districting, some children did have to ride to school."

(Scott deposition, pp. 8-9.)

Subsequent to the establishment of the new boundaries, there was a series of meetings and communications with parents, and the new boundaries were publicized in the newspapers in advance of their implementation. The new elementary boundaries were approved by the Board in its meeting of March 8, 1955.

One of the effects of the redistricting in 1954 was to bring about equalization of students in attendance at the various schools. As Scott testified:

> "In some schools, especially toward the edge of the black area, there were schools of white children that had some empty

rooms and they were redistricted to take down the numbers from the black schools. For years the black schools, the teachers had about forty-five children to a room; whereas, in most of the white schools there were about thirty-five children. But when we redistricted in 1954-55, we tried to have every school in the city, black or white, average the same number of pupils per room."

(Scott Deposition, pp. 49-50.)

The high school boundaries were redrawn by Mr. Sellman, using the same method as Mr. Scott used. The new boundaries were publicized and interested groups and organizations, including the NAACP, the Urban League, PTA and other civic and religious groups were invited to inspect and comment on them. No complaints were received and the boundaries were approved by the Board on December 14, 1954.

The plan formulated by the Board, described above, succeeded in desegregating the previously dual school system.[6] The level of desegregation achieved through the plan was substantial and system-wide. Almost 60% of the black high school students chose to attend the previously all white school in their new district attendance area, with the result that six of the seven previously all white high schools had a racially mixed enrollment. At the elementary school level about two-thirds of the total enrollment were attending interracial schools.[7]

The Board's desegregation plan encompassed desegregation of the faculty, discussed infra, the administration, and

the Board itself. Since April 18, 1955, there has been no time when the 12-member Board did not include at least one black member, two since the school year 1960-61, three since the school year 1962-63, and four since the school year 1970. There have been four black presidents elected by their colleagues on the Board.

Special committees were appointed by the Board to deal with desegregation policies and procedures. The first was a staff committee of three members, of which James A. Scott, a black assistant superintendent, was chairman from the establishment of the committee on November 14, 1961. The second was a continuing committee on integration, consisting of four members of the Board, which was created on September 10, 1963, and was first chaired by the Reverend John J. Hicks, one of the black Board members.

The Board's desegregation plan received widespread support in 1954 from civil rights supporters. Wylie Davis, in his study on St. Louis which was a Report to the Civil Rights Commission in 1962, praised the effectiveness of the Board's plan:

> "The 1954-56 transitions, then, were solidly conceived and brilliantly carried off. They represented a signal breakthrough in human relations, and everywhere those who prize mans dignity were properly impressed."

As a result of the Board's 1954-56 desegregation plan, a unitary public school system was achieved in St. Louis.

F. Resegregative Factors.

After the 1954-56 desegregation plan was implemented, several forces, outlined below, which are beyond the Board's control, impeded further integration and caused resegregation in the St. Louis public schools.

1. Socio-demographic changes in St. Louis.

In its origin and for many decades thereafter the population of the City was predominantly white. The more recent decades, however, show a sizeable and consistent increase in the black population of the City, with a large loss of white population and a significant loss of the total population. Since no issue is raised in this case as to any race or ethnic group other than black, and since the aggregate of all such other minority groups is negligible in itself, they are combined with "whites."

The census data show the extent of this transition over the years since 1940:

Year	Total Population	Black	% Black
1940	816,048	108,765	13.3%
1950	856,796	153,766	17.9%
1960	750,026	214,377	28.6%
1970	622,236	254,191	40.9%
1977*	523,000	229,980	44.0%

*The 1977 figure is an estimate.

During the period from 1950 to 1970 the "net out-migration"[8] of whites from the City amounted to over 400,000 while blacks showed an overall increase of over 100,000.

The exodus of whites and affluent blacks from the City to St. Louis County was caused and accelerated by a variety of mutually reinforcing factors; combination of widespread automobile ownership and building of expressways; abundance of land in the County which could be developed with modern homes, contrasted with the nonavailability of such land in the City and the age of the City's buildings which were found less desirable to satisfy the life-style of a post-war affluent society; and the pull of jobs in the County due to the very sizeable growth of employment oportunities provided by large manufacturers and businesses which became located in the County.

This movement from the City to St. Louis County is reflected in the following statistics of the United States census with regard to the racial composition of the County's population:

Year	Total Population	White	% Black
1940	274,230	261,840	4.5%
1950	406,349	389,336	4.1%
1960	703,532	683,652	2.7%
1970	951,353	902,002	4.8%

The white exodus to the suburbs in the 1950's and 1960's was accompanied, and partially caused or accelerated by the movement of the blacks from the inner-city area to the central west end and later to the northwest areas of the City and into the County. Factors in this black migration from the inner-city were the economic upgrading of former poverty and low income level families, and the impact of razing slum areas in preparation for new housing developments such as the Mill Creek area (declared blighted in 1953), J. J. Cochran

(1953), Capt. N. O. Pruitt (1955), Wm. L. Igoe (1956), G. L. Vaughan (1957, 1963), J. M. Darst (1956), and A. M. Webbe Apartments (1961). The slum razing resulted in large-scale displacement of black residents of the inner-city, the majority of whom migrated to the west end.

Intra-city movement and dislocation of blacks was also produced by the clearance required for the development of the highway system, including Highways 55, 44, 70, and 40. These displacements resulted in a major intra-city migration of blacks from the traditional inner-city to the central west end and to the northwest areas of the City and into the County.

Prior to the 1960 census only 2% of the blacks in St. Louis lived west of Kingshighway. By April, 1963, over 25% of the black population lived west of Kingshighway.

The west end area of St. Louis (Union to Hodiamont and Delmar to Page) went from about 60% black in 1962 to almost 100% black today.

The black out-migration from the inner-city to the west end and northwest St. Louis has resulted in high population density in the receiving areas. In many instances the shifting of blight, as dwellings became unprofitable to the landlords and unlivable for the tenants, resulted in the downgrading and the eventual abandonment of neighborhoods, which caused a continuous search by blacks for a better neighborhood.

Another result was the depopulation of previously heavily occupied areas. During the westward, northward and northwestward expansion of the black population of the

City between 1950 and 1970, fifty percent of the blacks moved out of the older black areas. This is reflected in the following statistical analysis by the 26 health districts into which the City has been divided since before 1950:

Health Districts	Black Population of the St. Louis Health Districts as a % of the City's Total Black Population		
	1950	1960	1970
1. Carondelet	0.3%	0.2%	0.1%
2. Gardenville	-	-	-
3. Southwest	-	-	-
4. Oakland	-	-	-
5. West End	0.3	7.3	9.9
6. Sherman Park	2.4	20.0	20.6
7. Northwest	-	1.2	6.3
8. Baden	0.1	-	0.3
9. O'Fallon Park	0.1	-	3.3
10. Fairgrounds	2.2	7.9	12.4
11. Garfield	27.5	22.1	14.4
12. Forest Park	5.5	7.0	6.5
13. Fairmount	0.5	0.4	0.2
14. Southampton	-	-	-
15. Cleveland	0.2	0.1	-
16. Tower Grove	-	-	-
17. Compton	-	-	1.1
18. Ranken	5.9	2.0	1.7
19. Lindell	4.0	3.4	3.5
20. Yeatman	3.3	2.8	4.1
21. Beaumont	30.4	17.7	8.2
22. Mill Creek	9.0	3.2	2.9
23. Soulard	0.8	0.5	1.0
24. Cherokee	-	-	-
25. Downtown	6.7	3.8	2.5
26. Hyde Park	0.8	0.2	1.0

The number of health districts with 10% or more black population (of all ages) increased from 8 in 1950 to 15 in 1970 and during the same period the number of health districts with more than 40% black population increased from 4 to 12. The percentages of blacks computed from the total population of each health district in 1950, 1960, and 1970 were as follows:

Health Districts	Black Population by Health Districts as a Percentage of the Total Health District Population		
	1950	1960	1970
1. Carondelet	1.9%	1.3%	1.2%
2. Gardenville	-	-	-
3. Southwest	-	-	-
4. Oakland	.3	.4	.7
5. West End	1.1	42.6	80.9
6. Sherman Park	6.4	76.6	96.8
7. Northwest	-	8.2	48.4
8. Baden	1.1	.7	5.4
9. O'Fallon Park	.8	.4	49.5
10. Fairgrounds	9.3	48.4	90.3
11. Garfield	77.2	96.9	98.9
12. Forest Park	22.6	47.6	66.8
13. Fairmount	4.8	5.0	4.8
14. Southampton	-	-	.1
15. Cleveland	.8	.7	.2
16. Tower Grove	-	.1	-
17. Compton	.2	.1	9.4
18. Ranken	32.9	22.9	30.4
19. Lindell	19.0	30.4	45.8
20. Yeatman	18.6	26.8	64.8
21. Beaumont	92.0	96.5	90.4
22. Mill Creek	45.0	44.3	74.4
23. Soulard	2.0	2.4	10.0
24. Cherokee	-	-	-
25. Downtown	55.0	61.8	60.1
26. Hyde Park	3.6	2.0	15.1

In 1970 the bulk of the black population (of all ages) of St. Louis was concentrated in a comparatively small area of the City which included about 60% of the 156 elementary school districts.

During the last few decades the proportion of black students enrolled in the City's public schools has consistently been greater than the proportion of the City's total black population. This is caused by a number of factors, including the fact that a higher proportion of black families than white is in the child-bearing age group; a higher proportion of white pupils than black attend private and parochial schools; and that elderly whites represent a large portion of the white population which remained in the City, whereas a large proportion of those who moved to the suburbs have been young and middle-age families with children.

In 1950 the black population was 17.9% of the total population of the City, while in the same year, black elementary school enrollment accounted for 30.8% of the total enrollment. By 1970 the City's black population was 40.9% of the total while black pupils made up 65.6% of the elementary school enrollment. In 1977 black enrollment in elementary schools was up to 72.7%, while the total black population of the City was estimated at 44%. The black student enrollment covers a wider geographical area than the overall black population.

Together with the massive shift in the black population to the central west end and the northwest areas of the City, there was a shift in the geographic concentration of school-age children. This relocation of school age children needs to be compared with the higher use of the public schools by

black children than by white children and explains the tremendous overcrowding of public schools in the northwest portions of the City.

From 1953 to date, the racial composition of the pupils attending the public schools of the City, excluding Harris Teacher's College, has been as follows:

School Year	Black	White	Total	% Black
1953-54	30,880	58,595	89,475	34.5%
1962-63	59,941	48,304	108,245	55.4%
1963-64	63,675	47,762	111,437	57.1%
1964-65	66,886	46,817	113,703	58.8%
1965-66	69,888	45,834	115,722	60.4%
1966-67	71,844	44,478	116,322	61.8%
1967-68	73,433	43,238	116,671	62.9%
1968-69	73,408	42,167	115,575	63.5%
1969-70	73,128	40,246	113,374	64.5%
1970-71	72,965	38,268	111,233	65.6%
1971-72	73,221	35,459	108,680	67.4%
1972-73	72,629	32,988	105,617	68.8%
1973-74	68,624	30,226	98,850	69.4%
1974-75	65,252	28,068	93,320	69.9%
1975-76	61,672	25,938	87,610	70.4%
1976-77	58,148	23,600	81,748	71.1%
1977-78	55,984	21,017	77,001	72.7%
1978-79	54,584	18,638	73,222	74.5%

2. Housing segregation.

The evidence of housing segregation in St. Louis is undisputed in the record. The Report of the U. S. Commission on Civil Rights, "Racial Isolation in the Public Schools," 1967, gives St. Louis as an example of "severe" residential segregation.

Prior to 1954 a pattern of racial housing segregation prevailed in the City

and discriminatory restrictions against blacks were enforced by the courts and agencies of the State of Missouri. Dolan et al. vs. Richardson et al., 181 S.W.2d 997 (St. L. App., 1944); Shelley v. Kraemer, 355 Mo. 814, 198 S.W.2d 679 (Mo. en Banc, 1946) rev'd, 334 U.S. 1 (1947); and Jones v. Alfred H. Mayer Co., 255 F. Supp. 115 (E.D. Mo. 1966), aff'd, 379 F.2d 33 (8th Cir. 1967), rev'd, 392 U.S. 409 (1968).

After 1954 certain discriminatory practices against blacks continued to exist in the City, such as:

a) The failure of the City to enforce building codes and the strict adherence to use of brick in building.

b) Red-lining of areas by insurance companies and lenders.

c) Segregated policy of the Federal Housing Administration (FHA), and

d) Newspaper listing of separate for "colored" ads.

The fact that government policies and action have been a major force in developing and maintaining housing discrimination against blacks is undisputed in the record. The Department of Housing and Urban Development (HUD) is and for many years has been guilty of intentional housing segregation and has been so found by some federal courts. (Testimony of Dr. Gary Orfield, expert witness for the Department of Justice.)

In a 1975 article entitled "White Flight Research: Its Importance, Perplexities and Possible Policy Implications," Dr. Orfield states:

> "White Flight as a Triumph of National Housing Policy. The phenomenon described as "white flight" by students of school desegregation is often seen, in another light, from another angle, as a true triumph of the basic tools of U. S. housing policy during the post-World War II period. Facilitating white suburbanization has been a basic goal, explicitly at first and implicitly to this day."

Dr. Morrison, an expert demographer, testified in a similar vein that federal policies on the interstate highway program, housing and FHA refusal of insurance on inner-city mortgages resulted in white movement to the suburbs and in housing segregation of blacks in the City.

3. Title I.

Following the enactment and implementation of the Elementary and Secondary Education Act of 1965, 20 U.S.C. §241a et seq. (hereinafter ESEA), a large number of schools were provided and have been operated by the Board with federal assistance. The purpose of this federal program is to "bring better education to millions of disadvantaged youth who need it most" "because of the strong correlation between educational under-achievement and poverty," as stated in the Senate Report (U.S. Code Congressional and Administrative News, 89th Congress, First Session, 1965, pp. 1450 and 1449). Federal funds were made available to the Board under Title I of the ESEA for students living in the areas (46 in 1972) of the City which have been declared eligible upon meeting the specified standards of economic disadvantaged conditions of its

resident children (federally determined percentage of Aid to Dependent Children (ADC) recipients).

Federal Title I funds are disbursed each fiscal year by the Department of Health, Education and Welfare (hereinafter HEW) to the State of Missouri school authorities. This money is in turn allotted to the individual school district. The Title I programs for the St. Louis school district are developed by the Board and approved by State of Missouri officials and by HEW. Recipients of federal Title I funds are obliged to report to HEW officials respecting Title I projects and programs. The evidence shows that HEW officials have visited and viewed St. Louis Title I projects.

Title I funds are earmarked for services, including, where necessary, the construction of school facilities, for "the special educational needs of educationally deprived children in school attendance areas having high concentrations of children from low-income families." 20 U.S.C. §241e(a)(1)(A).

HEW regulations are designed to carry out the policy of Title I. These regulations require that school attendance areas be designated, [9] that certain areas be designated as project areas under Title I, and that the Title I services/project be carried out in the locations best suited to serve the needs of the children.

Most of the eligible areas under Title I criteria in St. Louis are and have been racially characterized by black predominance. Since the Title I program was started in 1965, the total number of elementary schools designated to receive Title I

services ranged from 81 to 98 per school year, with an enrollment of between 86% and 97% black. These Title I schools constitute most of the schools in the system which have a major racial imbalance in their enrollment. In 1977-78, there were 82 elementary schools which received Title I services. 94.8% of the students enrolled in these Title I schools were black. Of the 90 virtually all black elementary schools in 1977-78, 73 were Title I schools.

The evidence shows that in St. Louis, where virtually all of the areas having high concentrations of children from low-income families are black, Title I requirements focusing on poverty and educational needs rather than purely educational needs, which the Board urged should be the main criterion, have led or contributed to the identifiability of a large number of schools as black and in furthering the concentration of black students therein.

The Board has operated Title I programs and built schools with Title I funds according to the following HEW regulation:

> "§116.17 Project covered by an application.
>
> (a) An application for a grant under Title I of the Act by a local education agency (other than a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) shall set forth a project for educationally deprived children residing in a project area composed of school

> attendance areas having high concentrations of children from low-income families . . . which project shall have been designed specifically to meet special educational needs of those educationally deprived children. The project itself shall be carried out at locations where the needs of the educationally deprived children can best be served. It may involve the participation of educationally deprived children residing outside the project area if such a participation will not dilute the effectiveness of the project with respect to children residing in the project area."

45 C.F.R. §116.17 (1972).[10/]

This regulation, in essence, required the Board, which needed federal Title I funds to implement remedial programs for educationally deprived children, to spend the Title I funds on children from eligible attendance areas (virtually all black). Although the project need not be carried out in the Title I designated area, the project still had to serve Title I children (virtually all black). Thus, if Title I children were assigned to non-Title I schools, the Title I programs would still have to have been taught separately. This situation would have had the same impact as intact busing. These requirements had the effect of excluding most white children from the Title I programs.

Although §116.17(a) allows the participation of educationally deprived children not from Title I areas to participate in Title I projects, this allowance is curtailed by the requirement that such

participation will not dilute the effectiveness of the Title I project for Title I children. In St. Louis this dilution prohibition effectively excluded non-Title I white students from participating in Title I projects. An example of this prohibition was the Title I funding of two specialized high schools.

Both Work Student and Lincoln were planned as racially mixed specialized high schools, with voluntary attendance by the students. Both were funded under Title I, ESEA. Although the federal requirements limit eligiblity of attendance to students living in an area which has been declared a Title I eligibility area, a 10% enrollment from other areas was first permitted in these schools but was later (1972) prohibited by the federal authorities.

Work Study was scheduled to open in 1969, but it was not completed until January 1970. Faculty and administration were racially mixed since the time when they were engaged in the preparation of the program in temporary facilities, and before the school was opened to the students. By the time the school opened the ratio of the student body was 92.6% black and 7.4% white.

The Lincoln high school was opened in 1966, after the Board acquired and renovated the educational building of Temple Israel for use as an opportunity school for students with special adjustment problems. The student body was composed of 266 black (94%) and 17 white (6%) students. By 1973 all students were black.

The dilution factor is especially important in light of the fact that Title I has not been fully funded by Congress and not all Title I eligible students can

receive services. This makes it all the more necessary for the Board to concentrate its funds on the areas having the highest concentration of poverty students. These areas are mostly black.

The prohibition against diluting a Title I project has not been the only barrier to mixing Title I eligible students (primarily black) with other students. As has been stated above, it has been the policy of HEW to restrict the use of Title I funds to eligible students from eligible areas. When students have moved to a non-eligible area, they have no longer been eligible for Title I benefits. The regulations have not indicated (and have, indeed, suggested otherwise) that Title I students moved by a school district to a school in a non-Title I area (when no court ordered desegregation plan was in effect) would continue to be eligible for Title I services.[11]

The evidence in the records shows that the Board followed and had to follow the regulations set out by HEW to receive Title I funding, which the Board needed. There is no evidence of any segregative intent by the Board with respect to how Title I funds were used.

G. Resulting De Facto Resegregation.

1. Transitions in the schools.

As a result of the resegregative forces described above, with the resulting massive population movements -- outmigration of whites to the suburbs, intra-city migration of blacks -- many transitions occurred in the St. Louis public schools. These transitions illustrate the great mobility of both black and white popula-

tions. These changes were largely unforseeable and/or beyond the control of the Board.

The major transition in St. Louis after the Brown decision was the change from a majority white system to a majority black school system. Another major change was the substantial increase in student population (mostly black) in the west and northwest areas of the City and a decrease in enrollment in the southern areas of the City. Much of the white migration from St. Louis was from the west and northwest areas of the City. This white population was rapidly replaced by a larger black population, causing a dense black population in the west and northwest areas of St. Louis.

The intra-city population changes noted above are reflected in the transition of a number of schools from well racially mixed student bodies to virtually all black enrollment (more than 90%). In the 1962-63 school year there were 30 regular elementary schools with black enrollment in the range from 10% to 80%. Of these, 14 reached a black enrollment of over 91% by the school year 1973-74. This transition is shown in the following tabulation:

Percent Black Pupil Population

School	1962 - 63	1963 - 64	1964 - 65	1965 - 66
Blair	12.2%	13.2%	15.7%	16.8%
Hamilton	47.9	60.7	75.7	93.0
Harrison	46.6	75.2	90.7	96.3
Herzog	35.0	40.8	21.1	30.3
Howard	35.1	49.0	58.0	63.1
Howard Branch	58.1	72.4	81.7	83.9
Jackson	16.5	21.9	26.7	34.4

Lowell	31.1	19.6	26.1	28.1
Mark Twain	13.5	14.5	12.3	22.2
Marquette	70.9	79.2	84.2	89.8
Peabody	79.6	72.5	86.2	90.9
Rock Spring	55.7	56.6	40.1	51.7
Walbridge	39.2	42.7	13.6	33.4
Walnut Park	38.2	40.7	25.1	32.5

School	1966 - 67	1967 - 68	1968 - 69	1969 - 70
Blair	24.3	32.6	47.0	67.7
Hamilton	96.2	97.7	98.0	99.8
Harrison	97.8	96.0	99.1	100.0
Herzog	28.1	29.8	42.0	53.4
Howard	70.6	77.7	89.6	94.9
Howard Branch	88.2	93.1	91.6	97.9
Jackson	49.2	65.9	81.2	87.5
Lowell	35.0	41.1	51.4	63.3
Mark Twain	29.6	41.7	62.5	86.3
Marquette	90.6	97.7	98.5	98.8
Peabody	95.8	98.4	98.7	98.5
Rock Spring	58.0	63.3	63.5	76.3
Walbridge	29.5	17.7	27.4	45.1
Walnut Park	38.2	35.3	40.2	48.0

School	1970 - 71	1971 - 72	1972 - 73	1973 - 74
Blair	78.5	85.8	87.3	91.7
Hamilton	99.7	99.1	99.7	100.0
Harrison	100.0	100.0	100.0	100.0
Herzog	63.7	90.6	98.5	98.6
Howard	98.9	99.5	100.0	100.0
Howard Branch	98.8	99.4	98.6	98.5
Jackson	94.0	95.5	97.7	98.7

Lowell	71.3	79.5	90.7	95.3
Mark Twain	94.9	97.8	99.1	99.0
Marquette	98.9	99.1	99.4	99.2
Peabody	99.7	99.7	99.2	99.1
Rock Spring	85.0	94.0	89.8	93.3
Walbridge	71.1	88.0	97.4	98.7
Walnut Park	68.1	88.0	95.7	98.2

An analysis of the statistical data available during the period from 1953 to 1973 shows that of the 24 schools which reached a black pupil enrollment of approximately 50%, 22 increased that ratio to approximately 90% within the average period of 3.59 years, with a minimum of two years for seven schools and a maximum of eight years in the case of one school. Both schools which in 1972-73 had an enrollment still under the 90% level involved special attendance areas: (a) the Stix school's attendance zone is located in the area around the Hospital group, Kingshighway, the Washington University Medical School and related facilities which enhance the presence of a sizeable number of white families of child-bearing age; and (b) the other school, Waring, represents a unique situation, because of the adjoining controlled integrated neighborhood of Laclede Towne and its nature of a demonstraton center for Harris Teacher's College with city-wide optional attendance.[12/]

Of the 25 public schools of the City which reached a black enrollment of approximately 70%, within the average period of 2.04 years, ranging from one year for five schools to eight years in the case of one school, 24 out of these 25 schools reached the 90% level of black enrollment.

The only exception as of 1972-73 was Waring, which was a specifically controlled situation, as previously stated.[13]

The record shows that the experience in St. Louis has been that stable integration in a particular school is generally achieved only when the percentage of blacks remains below 50%. When the percentage of blacks in an integrated situation reaches about 50%, what was an integrated enrollment becomes an all black or virtually all black enrollment.

The racial transitions in schools once the student enrollment reaches about 50% black is one major reason for the racial imbalance in the west and northwest area schools. Another reason is the dense concentration of blacks in those areas.

The impact upon the public school system of all of the massive population movements encompassing migration into and within the City and subsequent heavy concentration of blacks in the west and northwest portions of the City compounded by the major migration of whites from those areas, resulted in staggering problems for the Board, particularly as to planning and capacity.

Great shifts in population caused some areas to lose much of the school population while other areas gained large numbers of students in a very short period of time. A striking example of this is set out in "Urban Decay in St. Louis" by the Institute for Urban and Regional Studies of Washington University (1972). This report showed that schools in the central section of the City lost up to 35% of their initial population in six months whereas the northwest area

gained as much as 25% new students in the same amount of time.

Other examples of student transience are noted by the Board. Superintendent Kottmeyer advised the Board in 1960 that "between the closing of school in June and the opening of school in September one out of every five children in the elementary schools will be residing at a different address and attending a different school." (Board meeting, April 12, 1960.)

With this pervasive student transience, the Board was faced with the chore of constantly finding new places in schools for students. School enrollments in the west and northwest areas of the City increased beyond the capacity of existing facilities. The Board had the difficult task of planning for space for these students with the uncertainty of where further population shifts might place or dislocate these students.

The result of this problem was an imbalance in school utilization. In January, 1964, Community Resources issued its study "Elementary Education Facilities in St. Louis" which focused on this problem. The study states:

> "We recognize that the problem is not one that has been created by any action of the school system. On the contrary it results from earlier difficulties, compounded by the gross and inadequately planned dislocation of the Negro population in St. Louis incident to the development of the Mill Creek program. Nevertheless, it is a

problem which must be dealt with by the schools system."

The eventual result of the massive population shifts and changing school enrollments was the resegregation of many schools that were previously integrated.

Resegregation was first noted in the St. Louis schools in 1962 when racial data was again taken [no racial data was recorded from 1954-1962]. In May, 1962, the Committee on Desegregation, chaired by James A. Scott, gave a progess report which noted the socio-demographic dynamics in St. Louis and added:

> "[T]his process of neighborhood transformation most frequently culminates in what is popularly called de facto "resegregation" of previously desegregated schools. . . . These "re-segregated" schools reflect in general the social problems as well as the racial imbalance of the communities they serve."

This same committee in 1963 noted that discriminatory housing practices impeded the progress of integration and contributed to resegregation in the schools.

Resegregation has continued until the present to the point that the following quote is applicable to St. Louis:

> "Thus, while it is important to understand how the process of school and neighborhood resegregation proceeds, it is necessary to point out one inescapable fact: given constant density, a

> growing minority population that stays within the central city combined with a white population free to move out of the central city will inevitably produce an increasing number of segregated neighborhoods and segregated schools. As Arthur Stinchcombe, Mary McDill, and Dollie Walker note from studying this phenomenon in Baltimore, the city simply runs out of whites with whom blacks can integrate."

Robert Wegmann, The Future of Big City Schools (1977), p. 19.

2. Changing pattern in school enrollment (excluding Harris Teacher's College.

As was noted above, no racial data on students was taken from 1953-54 through 1961-62. When racial data was reinstituted in 1962-63, major changes in school enrollment were noted. During that period the St. Louis public schools lost 10,291 white students, whereas the total enrollment for the same period increased by 18,770.[14] In 1953-54, blacks accounted for 34.5% of the total enrollment of 89,475, while whites consisted of 65.5% of the total. By 1962-63, blacks had attained the majority in student population, then accounting for 55.4% of the total system of 108,245 students.

From 1962-63 to 1967-68 the student population increased to the all-time high of 116,671 students. During this period approximately 5,066 white students left the St. Louis schools. The black majority increased to 62.9% of the student population.

From 1967-68 to 1971-72, the year this law suit was filed, the student population decreased to 108,680. During this period white student loss was approximately 7,779 and the black majority increased to 67.4% of the students.

From 1971-72 to 1978-79 the student population decreased to 73,222. White loss was accelerated to 16,821 white students over this period. The black majority increased to 74.5%.

3. Racial imbalance in the St. Louis public schools.

The following data pertaining to the years 1972-73, the year this suit was filed, 1975-76, the year the consent decree was entered, and 1978-79 is a summary of the racial compositions of schools in the years indicated.

In 1972-73, the St. Louis City public schools enrolled 105,617 students of whom 72,629 or 68.8% were black. [15] Of the 181 elementary and high schools operating, 148 enrolled 90% or more pupils of one race. Of these 148, 105 had 90% or more black enrollment and 43 were 90% or more white. Furthermore, 52 schools were 100% black and 15 schools were 100% white.

In the 1975-76 school year, when the consent decree was approved, the system enrollment in elementary and high schools was 87,610 students of whom 61,672 or 70.4% were black. Out of the 164 elementary and high schools operating, 133 enrolled 90% or more pupils of one race. Of these, 98 schools were 90% or more black, and 35 were 90% or more white. Also, 58 schools were 100% black and 15 schools were 100% white.

In the present (1978-79) school year, the system enrollment is 73,222 students of whom 54,584 or 74.5% are black. Out of the 157 elementary and high schools operating, 103 enrolled 90% or more pupils of one race. Of these, 88 schools have 90% or more black enrollment, and 15 have 90% or more white enrollment. Also 48 schools are 100% black and 3 schools are 100% white.

In addition to this data, the charts in Appendix A (1-3) show the racial compositions as to each school in the district for the above years.

The evidence shows that although racial imbalance is still present in the St. Louis system, there has been a substantial reduction in the racial isolation of white children.

4. Schools referred to as vestiges.

A certain number of schools which had a one-race enrollment in 1953 are claimed to have maintained virtually the same racial composition ever since. The continuity in the racial characteristics at such schools cannot be established with certainty because of the gap in racial statistics in schools from 1954 to 1962. The number of schools to which this applies is about 34--19 "black" schools and 15 "white" schools.

Of the 19[16/] black schools, all have had some white students during the period from 1954 to 1979. The number of these students ranges from about 340 at Henry elementary school in 1961-62 to smaller numbers in other schools. All of these schools have also had some white faculty during the period in issue.

The evidence shows that in the areas of the City where the so-called black vestige schools are located, there have been rapid transmutations and inversions in the racial enrollment caused by the out-migration of whites and the intra-city migration of blacks who replaced those whites. These changes caused racial inversions in the "white" schools in the same area, resulting in virtually all black enrollment at those schools as well. Considering the demographics of the area of the City affecting both former "white" and "black" schools, there is no evidence that any of these 19 black schools are vestiges of a dual system. Rather, one can only conclude that these schools, along with other schools that changed from majority white to majority black and have remained majority black,[17] reflect the preponderance of black population in those areas of the City and the black majority in the school system since 1962.

In addition, all of the so-called black vestige schools have been Title I schools since the inception of that program in 1962. Title I schools are discussed in more detail elsewhere in this opinion.

Of the 15 so-called white vestige schools, all but one have enrolled black students during the period in question. All of these schools have had black faculty. These schools are not vestiges of prior state-imposed segregation.

H. Actions of the Board.

1. Adoption of the neighborhood school system.

Before 1954-55, the neighborhood school was the basis of assignment for all

white students. Black children did not have neighborhood schools. With desegregation, the neighborhood school was adopted for all students and has been the basic principle in assigning children to elementary schools.

Under the neighborhood school concept, children in a given neighborhood are first to be seated in their neighborhood school. This concept was regarded by the Board as fostering a closer relationship between the home and the school, providing for the safety of children both in traveling to and from school and easier contact with the home in case of emergencies and facilitating participation by children in extracurricular activities. Parents are also able to participate and more readily observe their chidren's activities.

The neighborhood school is the most common form of assigning students to schools throughout the United States. The concept has many educational values, noted above, as well as economic and administrative advantages. The advantages of the neighborhood school concept are widely, although not uniformly,[187] supported by educators and laymen alike.

In 1962, the Desegregation Committee of the Board, chaired by James A. Scott, reported that in a study of cities over 300,000 people there was near unanimous approval among parents, teachers, citizens, and educational authorities of the neighborhood school. The study stated that:

> "[T]he elementary school should be a neighborhood institution and that everything possible should be done to provide every

> child adequate school facilities within walking distance of his home."

The original plaintiffs to this suit, Liddell, et al., also supported the neighborhood schools in 1971 for the following reasons:

> "As concerned parents in the Beaumont/Sumner School District, we firmly believe that busing of our children is in direct opposition to the neighborhood school concept; and that busing is harmful emotionally, socially, and educationally to black children.
>
> * * *
>
> The black families in north St. Louis are trying to stabilize their neighborhoods. . . . Our neighborhood schools are key factors in this stabilization."[19]

Letter of 1971 to the Board.

the size of a district served by a neighborhood school depends on the number of children residing in an area. In an area where relatively few children live, the geographical boundaries of a district served by an elementary school are apt to be large. The converse is also true--where the population is dense, the school attendance districts will be smaller. It has been noted in a statistical report entitled "The Status of Integration in the St. Louis Public Schools during the 1967-1968 School Year," prepared by the Staff Committee on Integration of the Board, that:

> "Analysis of these reports further indicates that the smaller the geographical unit from which a school receives its pupil population the more uniracial its student personnel is likely to be."[20]

Some small school attendance districts in St. Louis are the result of dense population in some areas (predominantly black) of the City.

The record demonstrates that the neighborhood school concept has been applied neutrally by the Board as to black and white students since this policy was applied to both races under the unitary school system adopted in 1954-56.

The Board has departed from the neighborhood school concept in the following ways; busing for overcrowding and distance, student transfers, and attendance at city-wide, special, and technical schools. None of these have been used by the Board to depart significantly from the neighborhood school concept.

The neighborhood school policy has been of decisive importance[21] in a host of Board decisions concerning how and where students were and are educated, including decisions as to new school selection, construction, and school additions.

2. Student transfers.

a. Transfers concomitant to desegregation.

Desegregation in 1954-55 and the redrawing of attendance zone lines was accompanied by a student transfer policy

(which had been in effect before desegregation)[22] which provided:

> "Students already enrolled in a school, but not resident in its new district may, but are not required to continue at that school until they graduate. This privilege will be granted, however, only if the particular school is not overcrowded."

This policy was designed to allow students to remain in the school of their origin in order to complete their graduating requirements rather than transfer schools. This policy applied only to students who had already attended the school in the previous district and lasted only until the student graduated.

Since no records of the race of students were kept from 1954 to 1962 it is impossible to conclude from the evidence how many students chose to exercise this option and what effect the policy had on desegregation.

Some evidence was offered to indicate that 40% of black high school students chose to remain in their formerly statutorily-designated all black schools and to graduate from those schools. This evidence indicates that 60% of the black high school students chose to attend the previously all white high schools. Had no option been available, it is impossible to know what greater percentage of black students would have been enrolled in interracial high schools.

There is no evidence as to the number of white high school, and white or black

elementary students who opted to remain in their former schools to graduate.

b. Permissive transfers.

In 1963 the neighborhood school concept was questioned by some individuals and groups as rigid and not apt to facilitate integration in areas affected by segregative housing. The question was directly addressed by the Citizens Advisory Committee ([CAC] appointed by the Board in 1963 to study various aspects of the school system and to make recommendations to the Board)[23] which recommended adherence to the neighborhood school policy and also further recommended adding the open enrollment concept as another dimension to the basic neighborhood school concept. The Board adopted this recommendation which became known as permissive transfers.

Permissive transfers allow pupils to be enrolled in a different school from that of their neighborhood whenever space is available in the other school. Parents assumed the responsibility of transportation. When the transfer is granted, the pupil is allowed to continue his enrollment in the receiving school until graduation and is eligible to attend the high school of that district. This program, which was adopted on July 26, 1963, applied to a small number of children and has had a very limited effect in fostering future integration.

Policy changes made by the Board on June 14, 1976, were designed to further integration and to facilitate accessibilty to schools by providing free transportation to the students.

c. Special transfers.

Transfers from neighborhood schools have also been allowed for such reasons as (1) curriculum not offered at their own school; (2) medical considerations; (3) an older brother or sister attending another school; or (4) employment of a parent in the receiving school's vicinity.

Charges of abuse have been aimed at the first two categories.

(1) Curriculum transfers -- During the period from 1955 to 1962, Soldan high school changed from 74% white to 90% black. German was not offered at Soldan, but was offered at Roosevelt, a southside predominantly white high school. Students wishing to study German could obtain a curriculum transfer to attend Roosevelt. Abuse of this "German transfer" allegedly allowed a substantial number of white students to escape the racially changing Soldan. The substantial number of transferees amounted to a little over four students per year in the years 1957-1961. The largest contingent, 29 transfers for German, occurred in 1962.[24] No subterfuge could be detected until 1962-63. German was offered as a course at Soldan in 1963-64 to end the subterfuge. The German incident illustrates the Board's desire not to see transfers abused for racial motivations.

(2) Medical transfers -- Charges of abuse concerning medical transfers have been raised in connection with the opening of the then majority white Northwest high school. The Board was aware that such abuses in medical transfers from majority black Beaumont high school to Northwest might take place. Attention was drawn to the matter at a Board meeting and the Board was warned that the requests for medical transfers might be forthcoming and that

they would be denied.[25/] There is no evidence that the abuses actually occurred. This incident demonstrates that the Board affirmatively guarded against racially motivated abuses of transfers.

There is no evidence that special transfers established any pattern of abused discretion or that they resulted in any significant degree of resegregation.

3. Boundaries and feeder patterns.

As was stated above, the boundaries that were drawn in 1954-55 to effectuate a unitary school system were neutral and nondiscriminatory.

In later years the Board made many boundary changes to meet increasing and/or shifting student populations. Changing school capacities such as those caused by completion of new buildings and additions in some areas of the City and by decreased enrollment and closed schools in others necessitated boundary adjustments.

The policy of the Board in drawing school boundaries was to ensure that every effort was made to secure maximum integration consistent with the following criteria; building capacity, distance, safety from the viewpoint of minimizing traffic hazards and hazardous topographical barriers, and, as to high schools, transportation facilities.

Boundary changes subsequent to the 1954-55 changes were drafted or reviewed by the integration committees of the Board. Some suggested boundary changes were not implemented due to disapproval by these committees.

Although boundary changes were made in accordance with the above stated integration goals, boundaries have had little effect in St. Louis, especially as to elementary schools, because of the City's demography and racial distribution.[26]

The evidence shows that boundaries have not been gerry-mandered by the Board. Boundary changes were made in conformance with the Board's neighborhood school policy.

The issue as to high school boundaries is feeder patterns, or the manner in which elementary school students are assigned to attend the different high schools.

Various specific charges are made that the Board manipulated feeder patterns to achieve desired racial proportions in the high schools. Representative allegations are separately addressed here.

a. Vashon high school.

In 1955 when dual boundaries were eliminated, the attendance areas of the L'Overture and Attucks elementary schools (statutorily black schools under the dual statutory system and black afterwards) were assigned to feed into McKinley high school (statutorily white). The initial set of boundaries resulted in 1,437 whites and 211 blacks attending McKinley in January, 1955.

For the 1955-56 school year parts of the above areas were reassigned to Vashon high school (statutorily black), thus reducing by half the number of blacks going to integrated McKinley and instead going to unintegrated Vashon.

At the same time, however, attendance areas feeding into Vashon were reassigned to then integrated Central high school. These adjustments in feeder patterns did not materially affect integration.

In 1963-64 Vashon high school was moved from its original building, which became the new site for Harris teacher's College,[27] to the former Hadley high school site. This move is charged to have had a segregative impact. Before the move, Vashon was 100% black; afterwards the school was 99.7%. Thus the move had little effect on integration.

(b) Soldan high school.

Between 1956-62 Soldan high school changed from a well-integrated school to a virtually all black school. Plaintiffs charge that manipulation of boundaries contributed to this phenomenal change. The record does not support this charge, but rather shows that the switch was caused by widespread migration of whites out of this area of the City and replacement by black residents.

Soldan became virtually all black (99.2%) in 1962. In 1965-66 (when Soldan was 99.4% black) the Board reassigned Stix elementary school (84.2% white) from Soldan to Southwest high school (99.6% white). A close examination of the evidence reveals that this switch had an integrative impact. Whereas the black percentages at Soldan remained constant, the percentage of black students at Southwest steadily increased, partly as a result of Stix (which became increasingly and finally majority black) students being assigned to feed Southwest. It is noted that when Stix became majority black it was not reassigned to Soldan.

c. Beaumont and Central high schools.

In 1967-68 the Eliot elementary school (predominantly white) was transferred as a feeder school from Beaumont high school to Central high school. Eliot was originally assigned to feed Beaumont in 1964 when Beaumont was 61.0% black in an effort to protect the biracial enrollment of Beaumont. Eliot was assigned to Beaumont until the 1967-68 school year when the black percentage had increased to 96.2% despite the presence of Eliot students.

At the same time Central's black enrollment was increasing so that by 1967-79 there was a racial mix of 33.2% black and 66.8% white.

The feeder change had the effect of maintaining a racial mix at Central for some time when any effort at Beaumont was futile. Central became majority black in 1970-71 and is currently virtually all black.

4. Redistricting.

In the two decades from 1954 to 1974 the administrative structure of the public schools of the City has undergone substantial changes, directed to provide a higher degree of decentralization of authority and responsibility at the local administrative level. The system which has been in effect since the school year 1970-71 changed the administrative structure from a horizontal one of separate groups of elementary schools and of secondary schools to a vertical restructure. The system was reorganized into five administrative districts, each headed by a District Superintendent of whom three are black. One of the reasons for the administrative change was to afford new opportunities for

improving desegregation through inter-district activities. The new districts were planned to include high schools with different racial compositions.

Each administrative district includes two academic high schools and an approximately equal number of regular elementary schools which become feeder schools for the high school in the geographical boundary in which they are located. These districts are identified by the names of their high schools. In the 1972-73 school year the districts were constituted as follows: Banneker; Central-Vashon District with 25 elementary schools and five branches; Cleveland-Southwest District with 28 elementary schools; Beaumont-Sumner District with 21 elementary schools and 11 branches, and Northwest-Soldan District with 20 elementary schools and 11 branches. In the course of the school year 1972-73 two branches were added to Beaumont and one to Soldan.

5. Transportation.

Busing has been used by the Board as a measure to relieve overcrowding. Students are transported from the overcrowded schools to schools with excess capacity located elsewhere in the district.

Due to the demographic conditions of the City, with heavy overcrowding in schools of predominantly black enrollment and vacant space available in schools with predominantly white enrollment, this busing has consisted mostly of black students going to predominantly white schools. In some instances white students were bused to schools which had a pupil enrollment of more than 90% black.

Busing has not been a favored measure for overcrowding due to opposition by parents of both races and because the value of the neighborhood school is lost. Busing has been shown to be educationally unsound, costly, and disruptive. Busing has therefore been used only when necessary to relieve overcrowding and to a lesser degree for distance problems.

a. Intact busing.

Busing was organized for some time prior to the 1954-56 desegregation plan in self-contained units, otherwise known as intact busing. This method of busing involved transporting entire classrooms of children to a receiving school to be taught as a separate class. The transported classroom was treated as part of the sending school, not of the receiving school. This method of busing was adopted for administrative convenience,[28] time scheduling, and educational reasons.

Implementation of the 1954-56 desegregation plan and its attendant redistricting relieved much of the overcrowding in both elementary and high schools, and thus in the years immediately following 1954 few pupils were transported. Due to the massive migration of people (mostly black) into the west end of the City, and the failures in 1960 and 1961 of voters to pass bond issues to construct new schools in overcrowded areas, overcrowding became a major problem in the early 1960's. These students (mostly black) were bused for the most part to otherwise virtually all white schools on the south side of St. Louis.

When busing once again became necessary the Board continued to use the pre-Brown method of intact busing. Intact

busing was applied neutrally as to white and black student classes. White students were transported intact to white schools (as shown in 1963 at the Fremont elementary school). As was recognized in the 1962 Report to the Civil Rights Commission, intact busing was administered without segregative intent: "It may fairly be inferred that segregation in the St. Louis receiving schools has been an adventitious incident of unprejudiced motivations." (P. 274 of the Report.)

Complaints were raised in 1962 that intact busing resulted in the separation of the transported students from many of the activities of the local students. This separation was alleged to be segregative and discriminatory.

In 1963 the Board voted to terminate the practice, effective in 1964. this action was taken in accordance with the recommendations of the Citizens Advisory Committee and the two Integration Committees of the Board. The change in policy resolved a controversy which had arisen in 1963 between the Board and the NAACP over the segregative impact of the busing policy. The Board had filed a declaratory judgment action in this federal district court for a determination of the intact busing issue. The NAACP filed a countersuit in this same Court charging the Board with constitutional violations concerning intact busing, segregated boundaries and faculties, and other practices that allegedly fostered segregation. Eventually the two actions were consolidated.

In the fall of 1964 new schools financed with the funds of a March, 1962, bond issue became available for occupancy,

thus relieving the need for extensive busing. The intact busing system was eliminated and was replaced by block busing.

In October, 1964, the Board and the NAACP moved the Court for dismissal of the consolidated suits. The motions were sustained as no justiciable issues were left to litigate. The NAACP recognized that the issues had been resolved in part; busing of blacks had been reduced to a minimum, intact busing was terminated, faculty integration was proceeding satisfactorily, and other issues had been met in part by the Board.

Busing was reorganized in 1964 into the block method. The city blocks from which the children are transported are regarded for practical purposes as part of the receiving schools. Transported pupils are fully integrated into all classes and activities of the receiving schools.

Busing based on the block method has been used since 1964 when busing has been necessary. The intact method has been disregarded for more than 14 years.[29]

The evidence shows that the Board's defunct intact busing policy had a disproportionate impact on black children, not because of any segregative intent of the Board, but because black children, being from the overcrowded areas, were bused more often than whites.

b. Busing 1964-78.

Despite new school construction in densely populated areas of St. Louis to offset overcrowding, busing has remained necessary for some students.

The charges leveled at the Board with respect to busing after 1964 are as follows: (1) the majority of students bused are black, (2) white students are bused to majority white schools, (3) black students are bused to majority black schools, and (4) black students who are bused to white schools are bused in small enough numbers so as not to disturb the predominantly white characteristic of the schools. The charges will be addressed separately. As a partial backdrop for this discussion the following information is set out.

In the school years 1972-73 and 1973-74, the statistics on the busing program of the Board show the following:

School Year	Bused for Distance	
	Black	White
1972-73	51 (10.5%)	435 (89.5%)
1973-74	42 (8.7%)	441 (91.3%)

School Year	Bused for Overcrowding	
	Black	White
1972-73	3,908 (82.4%)	832 (17.6%)
1973-74	3,190 (84.7%)	575 (15.3%)

School Year	Total	
	Black	White
1972-73	3,959 (75.8%)	1,267 (24.2%)
1973-74	3,232 (76.1%)	1,016 (23.9%)

The black pupils bused for overcrowding in the school years 1972-73 and 1973-74 went to schools with pupil enrollment of the following composition:

Receiving School Enrollment	1972	1973
All black	700 (17.9%)	442 (13.9%)
90-99% black	1,972 (50.5%)	1,429 (44.8%)
Less than 90% black	1,236 (31.6%)	1,319 (41.3%)

Of the 832 white pupils bused for overcrowding in 1972, 48 went to 12 schools with pupil enrollment more than 90% black. Of the 575 white pupils bused for overcrowding in 1973, 27 went to six schools with pupil enrollment more than 90% black.

(1) Black students are more often bused for overcrowding because the schools in the areas of the City from which they are bused have the most serious and persistent overcrowding problem. (Whites are more often bused for distance than are blacks.) It is also to be noted that since 1962 black students have been in the majority in the St. Louis schools. In 1972 when the percentage of black students bused was 75.8%, blacks accounted for 68.8% of the school system.

(2) White students from majority white schools (virtually all are in south St. Louis) who were bused for overcrowding were generally sent to other south St. Louis schools with excess capacity. On close examination of busing routes, nothing was improper about where these students were assigned. White students bused for overcrowding have been bused at times by the Board to virtually all black (90-100%) schools.

The record also shows that schools toward the center of the City which had vacancies were often utilized to further integration. There is also no evidence (and no charge) that white students were bused past black schools with space to other white schools.[30] The converse is also true.

(3) Of the black students transported for overcrowding in 1974-75, 63.7% were assigned to schools having an enrollment 90-100% black. The figure for 1975-76 was 67%.

Black students were bused for overcrowding in 1974-75 to 15 predominantly white schools. The figure for 1975-76 was 13 schools.

Why more busing of black students to white schools did not take place is obvious from reviewing the map of busing routes for 1972-73. The great majority of black students bused are from far north St. Louis. Students that were bused to majority white or south St. Louis schools from that area underwent very long cross-town bus rides. Nothing improper can be inferred from busing students to closer schools.[31]

(4) As was noted above, the black students transported to predominantly white schools in south St. Louis were fully inte-

grated into classes at those schools during this period. Transported students were kept in reasonable ratio to the number of local pupils. Plaintiffs charge that the Board operated an informal quota system which limited desegregative transportation of black students to white schools. The charge is without merit.

The policy of maintaining reasonable ratios of transported pupils to local students, which applied to both a receiving classroom and the receiving school, was based on the following reasons. A reasonable ratio standard would prevent any classroom from becoming overwhelmingly black, thus being susceptible to a charge of "intact" busing with token representation of white students. Transporting a large number of black students out of ratio to local white students would serve only to create majority black schools in south St. Louis. Finally, a great number of transported students in a school neither lends to the overall stability of a school nor to viable desegregation.

6. School construction.

The intra-city black migration, and resulting severe overcrowding noted above, were met by the Board not only with the short-range solution of extensive busing, but also with the use of rented premises and portable classroom units. Seventy-seven portable units were in operation in 1961, of which 67 housed entirely or predominantly black pupils. The other 10 portables were used in schools with integrated or predominantly white enrollment. In 1972, 17 schools, with predominantly black enrollment, used 95 portable classrooms on their premises. Furthermore, nonclassroom facilities in several schools with predominantly black enrollment were converted to

classroom use, with the effect of increasing the black population of those schools.

Renting of facilities in congested areas was resorted to when feasible. Parents of children in areas where rented space was used favored this method of relief to overcrowding which retained the advantages of neighborhood schools.

For long-term relief of severe overcrowding, the Board resorted to permanent school construction in those areas where, as a result of the northwest and westward intra-city migration of the black population, the crowded conditions of the neighborhood exceeded the capacity of the existing schools. In turn, the new constructions and additions to existing schools in those neighborhoods resulted in small attendance zones.

The permanent constructions and additions made by the Board were authorized through a series of bond issues. The 1955 bond issue of $16,395,000 provided funds for 12 elementary schools, additions to O'Fallon and Southwest high schools, and seven school site expansions. The 1962 bond issue, totaling $23,180,000, provided funds for the construction of the new Northwest high school, additions to Southwest and McKinley high schools, 12 new elementary schools, and additions to others.

Both these bond levies for new school constructions or additions were explained to the voters and consistently received the affirmative vote of the predominantly black wards, including those where these improvements were to be located, to a higher degree than that of the City as a whole: in 1955 they ranged from 93% to 97% as compared with

a city-wide vote of 83%; in 1962 the range was 79% to 89% as compared with a city-wide vote of 74%.

In a number of instances, in addition to O'Fallon, new constructions, additions and adaptations of existing buildings for school use were planned by the Board as racially mixed situations:

(A) Northwest high school was planned in 1963 with an estimated percentage of black enrollment of 30%, and a projection of an ultimate increase to 40%. It was opened in 1964 with a student body of 344 black (26.4%) and 957 white (73.6%). It was expanded in 1968 with 12 additional classrooms. At that time the black enrollment was 42%. The increase in black enrollment was thereafter accelerated as follows: 1970, 62.3%; 1971, 78.6%; 1972, 90.4%; 1973, 97.0%; 1978, 98.7%.

(B) Twelve additional classrooms were constructed in the Central high school in 1968; at that time this school had a 41.6% black enrollment. It became 85.4% black in 1973-74. In 1978-79 the enrollment is 90.9% black.

(C) In 1961 a six classroom addition was built at the Sculling elementary school, which at that time had a racially mixed pupil enrollment. It became 99.1% black in 1966-67.

(D) The Peabody elementary school was planned to serve that integrated housing project in 1956. This racially mixed situation was reflected both as to student body and staff when it opened in September 1956. The first available statitstics for 1962 show 746 black (79.6%) and 191 white (20.4%) pupils, and a faculty of 17 black and 10

white. By 1965 the black student body was 90.9% and has been over 99% since 1970.

(E-F) Both Work Study and Lincoln were planned as racially mixed specialized high schools on voluntary attendance by the students. Both were funded under Title I, ESEA.[33] Although the federal requirements limit eligibility of attendance to students living in an area which has been declared a Title I eligibility area, a 10% enrollment from other areas was first permitted but was later prohibited by the federal authorities.

Work Study was scheduled to open in 1969, but it was not completed until January 1970. Faculty and administration were racially mixed since the time when they were engaged in the preparation of the program in temporary facilities and before the school was opened to the students. By the time the school opened the ratio of the student body was 92.6% black and 7.4% white.

The Lincoln high school was opened in 1966, after the Board acquired and renovated the educational building of Temple Israel for use as an opportunity school for students with special adjustment problems. The student body was composed of 266 black (94%) and 17 white (6%) students. By 1973 all students were black.

(G) An example of planning a school in a racially mixed situation which could not be carried out is the projected Carver-Blumeyer elementary school, which was intended to service the integrated Blumeyer housing project. A two year effort by the Board failed because the selection of one site was blocked by a lawsuit, and the Housing Authority did not provide funding and the Board was unable to find other

sources for the financing of the second site which was considered.

(H) Originally successful was the elementary school known as Howard Branch which was built in 1958. In 1962 the enrollment consisted of 201 black (58.1%) and 145 white (41.9%). By 1967 it was 93.1% black and has remained over 98% black since 1970.

(I) Metro was established as a specialized high school in 1972 by converting and adapting an existing building. Through special assignment of students furnished by the Board with bus passes, the small enrollment has been successfully controlled with 56 black and 56 white students in 1972 and 74 (52.1%) black and 68 (47.9%) white students in 1973. Metro has maintained a balanced enrollment. In 1978-79 the program enrolled 156 students, of whom 53.8% are black.

The above paragraphs demonstrate that the Board consistently selected, when possible, school sites to promote integration. The evidence also shows that many of the Board's attempts to maintain integrated schools fell to demographic changes in the City. These changes were not forseeable by and were beyond the control of the Board.

Much of the new school construction took place in the areas of the City with a predominantely black population. Although the Board knew that these areas were predominantly black,[34] the Board also knew that existing schools in this area were grievously overcrowded and were grossly inadequate in number to serve the community.

Charges of intentional containment in connection with the Board's construction policy are without merit.[35] The Stipulation of Facts reveals several attempts by the Board to locate integrated schools in fringe areas and areas which were likely to be and which were for a white integrated. These efforts did not enjoy prolonged success due to factors beyond the Board's control. The construction of new schools in areas of dense population, where the children were, was in conformance with the Board's neighborhood school policy which the Court finds on an examination of the entire record was supported by the majority of parents, administrators, citizens, and teachers, both black and white.[36] The construction avoided prolonged, extensive, and expensive busing which black parents consistently sought to avoid.[37] The record as a whole supports the Board's construction policy.[38]

The sites chosen for new school construction by the Board do not reflect any segregative intent. There is no evidence in the record that reveals that sites[39] other than those selected would have significantly furthered integration.[40] Sites were selected in response to pressing education and human needs of the time without regard to race.[41]

7. School closings.

From 1955 to 1968 the number of students consistently increased, especially in the heavily black areas of central west and northwest St. Louis. This increase necessitated the building of schools in areas with severe overcrowding. After an all-time high student enrollment in 1967-68, student enrollment has consistently declined.

After 1967-68, new school construction slowed considerably and schools started to close because of declining enrollment. From 1970 to 1978 approximately 30 schools have been closed. Schools were closed by the Board for the sole reason of declining enrollment. The Board has never closed schools (nor is it charged) for racial reasons.

When schools were closed, the Board reassigned students in accordance with the neighborhood school policy so that students would be as close to home as possible. This meant assignment when possible to a contiguous school. When a branch school was closed, students were assigned to the main school in that district when possible. When space in a contiguous school was not available, there were efforts made by the Board to locate space in noncontinguous schools that would enhance integration.[42] Of the seven schools closed at the end of 1976-77, student reassignments were made with efforts toward integration.

When students from schools 90-100% black that were closed have been reassigned to other 90-100% black schools, this was done so that students could continue to receive Title I services. Both the closed and receiving schools were Title I schools or magnet schools.

8 [43] Schools with city-wide enrollment.

The Board operates a number of specialized schools which enroll students on a city-wide basis, thus achieving the maximum possible degree of integration. Examples are: (a) Harris Teacher's College, which has been established and operated as the only local facility for the academic

preparation of teachers; in the school year 1972-73 it had an enrollment of 1,069, of whom 561 (52%) were black; (b) the technical high school (O'Fallon) which in 1972-73 had an enrollment of 3,308 students, of whom about 68% were estimated to be black; (c) the 13 special elementary schools, which in 1972-73 had an aggregate enrollment of 944 of which 78.3% were black; (d) three special centers for "gifted pupils" with an aggregate 19.6% black percentage of the total enrollment in the school year 1973-74; and (e) the Waring elementary school, which was reorganized in 1965 as a demonstration school interlinked with Harris Teacher's College, has an open enrollment for students from any area of the City. Students graduating from Waring have the option of attending any high school of their choice. In the school year 1972-73 Waring had a 76.1% black enrollment, inclusive of transported pupils.

Schools with city-wide enrollment are not affected by neighborhood populations. Even this type of student enrollment has not been able to keep balanced racial enrollments. O'Fallon and Waring, which for several years had good records of integrated enrollment, have in recent times become virtually all black schools; O'Fallon, ninth and tenth grades, with 94.3% black students in 1978-79 and Waring with 89.1% black students in 1976-77, the last year before Waring became a magnet school.

Other schools which have been maintained and operated by the Board include the following with their respective 1972-73 enrollment and racial composition:

(1) Six "specialized high schools," in which enrollment is open at the election

of qualified students. These schools offer specialized programs only and before 1974 did not offer a full high school curriculum. Beginning in the school year 1974-75, students were eligible to receive regular credits and a diploma from their specialized high school. The specialized high schools are as follows: (a) O'Fallon, discussed infra; (b) Metro, a pilot school without walls where students are offered educational experiences in the community outside the school premises for part of the day; (c)-(d) Martin Luther King and Delmar for mentally retarded; and (e)-(f) two specialized high schools for students in poverty areas under Title I ESEA: Work Study for students who are identified as dropout-prone, to provide them with combined on the job training and accredited academic courses sufficient to qualify for graduation, and Lincoln for students with academic and behavior adjustment problems.

These specialized high schools had the following enrollment and racial composition in 1972-73:[44]

	PUPILS	
	Total	% Black
Metro	112	50.0
(O'Fallon	*	*)
Delmar	360	99.7
King	916	98.7
Lincoln	142	97.9
Work Study	213	98.6
Totals	1,743	95.7

*O'Fallon students were counted in the racial count of their academic high school for this year.

(2) Thirteen special elementary schools (with separate administrators in charge) designed and operated for pupils with special needs because of physical or mental handicaps or other problems.[45] These schools with their respective racial enrollment as of 1972-73 consist of the following:

	PUPILS	
	Total	% Black
Children's Study School for children taken from their home under Court Order	25	56.0
City Hospital for hospitalized pupils	8	87.5
Continued Education for pregnant girls	256	98.4
Gallaudet for children with hearing and speech defects	90	76.7
Glennon Memorial Hospital for hospitalized pupils	15	33.3
Griscom for delinquent children, temporary detention	66	75.8
Michael for orthopedically handicapped children	118	61.9
Missouri Hills for delinquent children	83	84.3
Phillips Hospital for hospitalized pupils	17	94.1

St. Louis Children's Hospital for hospitalized pupils	14	85.7
Special #1 for mentally retarded pupils	82	8.5
Special #48 for mentally retarded pupils	99	100.0
Special #80 for mentally retarded pupils	71	91.5
Totals	944	78.3

(3) Eighty-two special schools for the mentally retarded, which are housed in rooms located in 82 regular elementary school buildings and are administered by those administrators. These schools had in 1973-74 an aggregate enrollment of 2,699 pupils, of whom 2,087 were black (77.3%) and 612 were white (22.7%)[46].

(4) Three special centers for "gifted pupils" in the Busch, Mallinckrodt and Wade Schools, located in south St. Louis. In the school year 1973-74, these centers had an aggregate enrollment of 584 children, of whom 155 (19.6%) were black.[47] Mallinckrodt and Wade are now operated as magnet schools.

a. The Technical high schools.

Before desegregation in 1954-56, there were two technical high schools, Hadley for white students and Washington for black students. In September 1955, all technical ninth graders, both black and white, were sent to Hadley. Desegregation of the upper three grades was accomplished in September,

1956, upon the completion of a new technical high school, O'Fallon. Two new technical high school districts were drawn for the City. O'Fallon was designated to serve a much larger area than Hadley.[48]

In 1962 Hadley was 95% black whereas O'Fallon was about 33% black. In 1963-64, pursuant to a recommencation of the Citizens Advisory Committee, O'Fallon became the only technical high school for St. Louis. The Hadley school became O'Fallon Branch. Enrollment at O'Fallon and O'Fallon Branch was city-wide. Students had free choice to attend either location. After the consolidation of the technical schools, O'Fallon branch (formerly Hadley) continued to be overwhelmingly black. O'Fallon eventually became majority black.

Starting in 1968-69, O'Fallon and O'Fallon Branch were used for half day vocational programs only and racial data was kept in the regular high schools which vocational students attended during the other half of the day. In 1977-78, racial statistics became available for full-time O'Fallon ninth graders. Of 946 ninth graders, 91.3% were black. In 1978-79, with statistics available for full-time O'Fallon ninth and tenth graders, of 1,559 students, 94.3% are black.

During the time when O'Fallon and Hadley were operated as two separate districts, some courses were offered at Hadley (Dry Cleaning and Pressing, Shoe repair, Cafeteria Tea Room Service, Auto Repair) that were not offered at O'Fallon. Likewise, certain courses were offered at O'Fallon (Aero-Mechanics, Advanced Machine Shop, Pre-Engineering, Practical Nursing) that were not offered at Hadley. The dif-

ferent course offerings were designed to obtain maximum use of personnel, to avoid duplication of expensive equipment for the training of students with advanced standing, and to bring together those students with high mechanical and technical aptitudes regardless of race. O'Fallon was the site chosen for the more "advanced" courses because it had the necessary room available and Hadley did not. At this time students desiring to take a course not offered at their technical school could enroll in the other school.[49] Later, O'Fallon and O'Fallon Branch were one district with open enrollment.

No discrimination or segregative intent has been demonstrated with respect to the technical schools.[50]

9. Staff.

a. Faculty.

Since 1954, when the Board's desegregation plan was implemented, the Board's integration policy regarding its teaching staff has been governed by the following general principles.

> 1. As always, the tenure rights of certificated (teaching) employees will be preserved.
>
> 2. Whenever possible, * * * teaching * * * employees will retain their present assignments. They will be transferred only to meet the needs of the service.[51]
>
> 3. When vacancies occur, employees will be assigned to fill them on the basis of the competence and adaptability of an

employee for a particular assignment.

4. Teachers will be appointed from a single rated list compiled from examination scores, without regard to race or color.

5. Promotions will continue to be made on the basis of merit.

This policy, which was formally reasserted in a July 9, 1963, statement of the Board, has been qualified by the efforts of the Board to improve the racial balance in the instructional staff of the schools. Various educational programs were developed by the Board to prepare teachers for integrated student bodies through pre-service educational courses, in-service programs as apprentices in schools of a predominantly different racial composition, as well as seminars, workshops and special courses for teachers and administrators given at Washington and St. Louis Universities. Harris Teacher's College has provided a number of courses in the problems of desegregation, human relations and black history, and through its demonstration school - Waring elementary school - has offered to prospective teachers a laboratory for quality education in a controlled racially mixed facility.

In the face of a severe teacher shortage in the 1950's and 1960's, particularly among black teachers, the Board actively and affirmatively sought out and hired black teachers.[52/] In more recent years an increasing shortage of black teachers has been encountered at the high school level. This shortgage is due in part to increased competition in employment opportunities

with industry, government, and other school districts and colleges. Teachers appointed in the 1972-73 school year received their traning in 30 different states.

In the decade from 1962 to 1972 the following changes occurred in the racial composition of the classroom teaching staff of the St. Louis public schools:

Year	White		Black		Total
1962	1,804	(53.7%)	1,555	(46.3%)	3,359
1970	1,798	(46.6%)	2,060	(53.4%)	3,858
1971	1,823	(45.7%)	2,164	(54.3%)	3,987
1972	1,837	(46.4%)	2,128	(53.6%)	3,965
1973	1,638	(44.4%)	2,052	(55.6%)	3,690

To improve the racial balance of the teaching staff in the schools, the administration has endeavored to assign new teachers to schools having a pupil enrollment predominantly of the race other than that of the teacher, and encouraging transfers on a voluntary basis and through persuasion in the case of teachers with tenure. No compulsory transfer of teachers to achieve racial mixing was ordered by the Board.[53] Teachers' seniority has traditionally been protected against involuntary transfers, which have remained limited to cases of decrease of teacher services in a school, and of unsatisfactory ratings. The evidence shows that the Board's failure to implement mandatory teacher transfers was done in good faith without any segregative intent.

In fact, the reluctance on the part of some principals to have on their faculty personnel of the other race, and similar resistance on the part of some teachers and certain sections of the community have limited the degree of racial mixing of

school faculties.[54/] In spite of the efforts of the Board to improve the racial balance of the teaching staff in the schools of the system, in a large number of instances the faculty and local administrators in the regular elementary schools follow the racial pattern of the neighborhood where the school is located.

In a number of schools, however, the racial composition of the faculty did not mirror that of the students. The following examples apply to 1962-63:

School	% Black Students	% Black Faculty
Soldan	99.2	65.5
Beaumont	50.0	9.6
Ashland	91.5	33.3
Dozier	98.3	53.3
Ford Branch	99.7	33.3
Herzog	35.0	18.2
Howard	35.1	16.7
Laclede	97.1	50.0
Long*	21.4	30.8
Marquette	70.9	24.0
Scullin	92.3	38.1
Walbridge*	39.2	12.5
Walnut Park*	38.2	15.0

*Those schools marked with an asterisk enrolled black students primarily as a result of intact busing. Even in this situation, black faculty was not closely matched to the black student population.

Where the evidence in the record demonstrates that faculty composition reflects or reflected the racial composition of the student body, there is and was minimal or no influence on the racial composition of the school. Where schools underwent drastic changes in racial

composition, the change in faculty composition followed rather than preceded student changes. Racial identifiability of schools is not now and was not in the past a result of the Board's failure to mandatorily achieve more racially balanced faculty.[55]

Racial identifiability of schools in St. Louis is and has been the result of the City's demographics. The following finding from Brinkman vs. Gilligan, 446 F.Supp. 1232, 1239 (S.D. Ohio, 1977), rev'd 583 F.2d 243 (6th Cir. 1978), cert. granted sub. nom. Dayton Board of Education vs. Brinkman, 47 U.S.L.W. 3451 (Jan. 9, 1979), is applicable to St. Louis:

> "Many of plaintiffs' witnesses asserted that the placing of black teachers in all-black schools had the effect of identifying that school as being black, thus impacting black children into black schools. . . .
>
> "The Court believes the evidence to be to the contrary. In every specific instance brought to the Court's attention in which black faculty were assigned to black schools, the school was already identifiable as being black because of the racial population of the students."

Between 1962 and 1972, the Board reduced the number of regular elementary schools without black faculty from 50 to 30, and of the regular elementary schools without white faculty from 47 to 27. The number of high schools with one race faculty was decreased from 3 to 0.

In 1973 the regular elementary schools with all white faculty were reduced from 30 to 26. In the course of this school year there was a further reduction to 25.

The Board's efforts culminated in the adoption of the Balanced Staff Policy statement of the Board of July 10, 1973. With consideration for the factors of competency, sex, experience, and age, this policy states that the basic and guiding principle of the St. Louis public schools is "to maximize racial representation among its staff members at all levels and in all job classifications." A three year schedule of implementation was projected by the Board.

During the years of implementation of the Balanced Staff Policy from 1973 to 1975, when the consent decree was entered, 139 teachers were transferred, 186 new teachers were assigned, and 45 administrators were transferred, for a total of 370, all to further racial balancing in accordance with the Board's policy. After the Balanced Staff Policy was adopted, applicants for teaching positions have not been employed unless they accepted an assignment to a school which was predominantly the other race.

Since 1975, when the consent decree was signed, the Board's policy in assigning teachers has been governed by paragraph 5 of that decree. Under paragraph 5, 10% in 1976-77, 20% in 1977-78, and in 1978-79, 30% of the teachers at each school would be of the race that was in the minority at that particular school.

The process of compliance with paragraph 5 in the school years 1976-77 and 1977-78 has been achieved, notwithstanding

some resistance from part of the staff to the mandatory transfers which were necessary to implement the decree. Implementation in 1978-79 is in the process of being carried out. The mandatory assignment of staff under the consent decree has been effective in eradicating racial imbalance in faculty representation at all schools. The actions taken pursuant to the consent decree have fully remedied any past deficiency in staff assignments.

b. Non-certificated personnel.

Policies similar to those for teachers have governed the employment and promotion of non-certificated personnel since 1954. On October 13, 1961, the hiring of non-certificated employees of the Board was placed under a centralized Merit System administered by the Superintendent of Instruction (later named Superintendent of Schools). In 1953 the percentage of black non-certificated employees was 16.7%. That percentage rose to 31.5% in 1963 and 61% in 1973.

Considering the aggregate of all employees, the Board has employed black personnel in a greater percentage than that of the adult black population in St. Louis.

c. Administrators.

Between 1962 and 1972 the Board increased black representation among its administrators from 33.2% to 59.6%. In 1976, 60.4% of the administrators were black.

In the decade from 1962 to 1972, more blacks than whites have been placed in high administrative positions with the Board, with the result that the number of blacks in

those positions has increased from 5 (16.1%) in 1962 to 15 (44.1%) in 1972, compared with 26 (83.9%) whites in 1962 and 19 (55.9%) in 1972. Among the high positions occupied by blacks in 1972 were those of Deputy Superintendent (who was Acting Superintendent in 1971-72), Assistant to the Superintendent, Acting Director of Personnel (who was promoted to Director in 1973), Fiscal Control Officer, and Director of the Division of Curriculum Services.

As a result of the Balanced Staff Policy of July 10, 1973, 27 administrators were transferred to positions or locations which improved the racial mixture in each of those situations. Included were the assignments of a black district superintendent to the McKinley-Roosevelt district which is a district with a number of elementary schools having a completely white enrollment, and a white superintendent to the Northwest-Soldan district, which has a predominantly black attendance. At the level of elementary school principals, several assignments wre made to provide representation of personnel of the race different from that of the majority of the staff and student body of those schools. In 1976 three of the five district superintendents were black.

d. Pupil-teacher ratio.

The average pupil-teacher ratio has been progressively reduced over the years by the Board: from 36 pupils in the regular elementary schools in 1955 to 31 in 1971 and thereafter, to 27 in the academic high schools. These are averages and there are variations from school to school. During the year 1972-73 the average pupil-teacher ratio in the regular elementary schools having a black enrollment of between 90% and 100% was 30.2:1, while the ratio in the

regular elementary schools with the opposite white enrollment was 31.2:1. Schools having less than 90% one race enrollment showed a pupil-teacher ratio of 30.4:1.

Comparable analysis and figures for the academic high schools in 1972-73 are as follows: the pupil-teacher average ratio was 25.8:1 in the academic high schools having an enrollment of between 90% and 100% black students, 26.7:1 for the academic high schools with comparable white enrollment and 23.4:1 in the high schools with less than 90% of either race.

A lower pupil-teacher ratio is found in the eight elementary schools of rooms of 15 and in each of the special elementary schools, where the ratio is 20 pupils per teacher, and 35 pupils in the instances where there are two teachers in the room. In the aggregate, the pupil population of these schools is predominantly black.

The pupil-teacher ratio in the six specialized high schools (exclusive of O'Fallon, whose students were counted in their academic high school) based on the averages for the first semester 1972-73 shows the following.

Schools Having 90%-100% Black Students	Average Daily Enrollment	Number of Teachers	Average Number of Pupils Per Teacher
Delmar	350	10	35.0
King	965	36	26.8
Lincoln	169	20	8.5
Work Study	223	18	12.4
Totals:	1,707	84	20.3

Schools Having Less Than 90% One Race			
Metro	112	7	16.0
Average for All Specialized High Schools	1,819	91	20.0

10. Curriculum and facilities.

a. Curriculum.

Over the years, after studies of, and upon the recommendations of its Committees on Integration, the Board has taken steps to (a) eliminate from the materials used in its schools pictures and expressions which were objectionable in terms of adverse racial implications, (b) promote black studies as an integrated aspect of the total curriculum for all children, and (c) provide special courses of black studies as part of the elective offerings in the academic high schools.

In the regular elementary schools, the instructional curriculum is the same for each school throughout the City, with the following exceptions: (a) the three gifted student centers have had their own programs, and (b) special remedial reading courses are provided in various schools. In the school year 1972-73 these programs were given in 71 schools by a total of 95 teams of reading specialists, comprising 166 teachers, to about 12,300 children. They were allocated among the five administrative districts, each of which is provided

with a reading clinic for the training of remedial reading teachers, and direct clinic services to the most difficult cases in the district, as follows:

Administrative District	Number of Teachers
Banneker: Central-Vashon (black enrollment 87.7%)	47
Beaumont-Sumner (black enrollment 99.8%)	46
Northwest-Soldan (black enrollment 96.5%)	41
McKinley-Roosevelt (black enrollment 32.4%)	28
Cleveland-Southwest (black enrollment 6.4%)	4

The curriculum in the high schools is established on a city-wide basis, but in the academic high schools there is a further flexibility in the curriculum of courses offered, with both variations and cyclic offerings and some elective privileges being granted to the students. In addition, students are allowed to transfer to the high school which offers the desired course. The offering of elective courses in a given high school is contingent upon the following factors: (a) student request, (b) faculty assessment of student needs, and (c) availability of teachers. Experimental programs are started in individual high schools before being extended city-wide. Examples are a course in black humanities which was piloted in Beaumont and Southwest, and a course in music which was initiated at Sumner, all before being offered in other high schools. Furthermore, special programs may be developed within the general scope of the curriculum upon local initia-

tive of faculty and students, with the approval of the administration. Elective courses may be dropped in a high school whenever there is diminution of student interest therein, at the discretion of the local faculty and principal.

Extracurricular activities provide integrated situations in such areas as (a) vocal and instrumental music groups (glee clubs, choirs, bands, kinder concerts) which are guided by professional music supervisors and teachers of the Board, Division of Vocal and Instrumental Music; (b) athletic activities which are planned and directed by the Board's Division of Physical Education with ball games and other intra-school and city-wide competitions; and (c) cultural programs, such as city-wide participation in Citizenship Education Clearing House Projects, seminars, clubs, art competitions, exchange programs with private schools, etc.

b. Facilities.

Facilities and opportunities for sport activities such as swimming pools and athletic fields are comparable among schools of predominantly white and predominantly black enrollment. At the elementary level, gym and other facilities are better and more modern in the 35 recently constructed schools with predominantly black attendance than in the older schools with prevailing white enrollment. The athletic equipment which is furnished by the Board is allocated on an equal basis of need to all schools under the supervision of interracial committees of coaches and representatives of the various departmental units involved.

The buildings housing schools of predominantly white and predominantly black enrollment respectively are of comparable quality and characteristics, except that more recent constructions are found in the schools having a predominantly black attendance. Of the 39 school buildings constructed by the Board during the last 20 years, 35 (89.7%) house predominantly black students; 2 (5.1%) house predominantly white students, and 2 (5.1%) have an integrated student body of less than 90% of one race. All of the 18 school buildings constructed within the last 10 years have a predominantly black enrollment. The average age of schools with predominantly white enrollment is higher than that of the schools with predominantly black attendance.

The maintenance of all school buildings is planned and carried out on a uniform city-wide basis which includes a continuing program of exterior painting of every school on a five year cycle and painting of the interior on an eight year cycle. Maintenance and repairs are carried out as needed throughout the school year and the custodial service is assigned to each school on the basis of its size.

The budget of the St. Louis public schools is established on a system-wide basis with funds allocated for programs and staff throughout the system and not by school. Administrative districts do not have separate budgets, except for a small sum ($2,500 in the school year 1972-73) which is allocated to each of the five district superintendents for miscellaneous and unanticipated expenditures. An exception was made in 1972-73 for the superintendent of the Central-Vashon district, to whom the sum of $16,000 was allocated in

connection with the special Banneker Project (a predominantly black area).

The Martin Luther King specialized high school for the mentally retarded is located in the former McBride Catholic high school which was purchased and remodeled by the Board in 1971. In the school year 1972-73, among its physical facilities were a small home economics room, a small library with limited equipment and poor ventilation. Beginning in the summer of 1973, improvements were carried out by the Board, consisting of a new home economics room with a commercial kitchen (used in connection with a commercial education program) and improvements of the industrial arts room. Part of the cost was paid with federal funds and, in addition, about $19,000 was paid by Board funds.

Work Study was established in 1970 as a Title I ESEA specialized high school for drop out prone students. It has good facilities for well rounded, well equipped programs for the subjects taught, inclusive of the academic subjects required for graduation.

Lincoln was established in 1966 as a Title I ESEA specialized high school for students with serious academic or behavioral difficulties, with the goal of helping work out their problems and returning to their academic high school. It has facilities for the usual secondary program, except as limited by its purpose, which requires emphasis on counseling.

c. Retentions and withdrawals.

The Civil Rights Report of 1972 shows that 523 secondary students were "retained" in their grade for that year. The federal form to be used to compile this report

defines the term "retained" for its purposes as follows:

> "Report in each column the number of pupils who were not promoted at the end of the last school term. Report only those pupils who were assigned to the same grade this school term as the last. Do not report those pupils who were promoted but are repeating a particular subject."

Of these "retained" students, in 1972-73, 506 or, or 97%, were black. There were no retentions at the predominantly white high schools of Cleveland, Roosevelt, and Southwest. Thirty were found in the two racially mixed high schools, Central and McKinley. The rest were found at the predominantly black high schools, Beaumont, Lincoln, Soldan, and Sumner. The rate at Beaumont was about 11% while the rate at Lincoln was 52%. Summer school programs are offered by the Board to enable students to make up credits as needed.

The following tabulation shows the dropout rate by each high school, with its racial student composition, in the school year 1972-73:

Percent of Black Enrollment	School	End of Term Membership	Number of Dropouts
100.0	Beaumont	2,738	331
73.1	Central	1,189	329
0.5	Cleveland	2,497	235
62.9	McKinley	1,134	265
90.4	Northwest	2,058	184
7.2	Roosevelt	2,414	522
100.0	Soldan	2,953	498
8.1	Southwest	2,428	195

100.0	Sumner	2,379	275
99.9	Vashon	1,885	544
98.6	Work Study	173	27
98.7	King	835	126
97.9	Lincoln	223	86
99.7	Delmar	235	76
	City-Wide	23,141	3,693

School	End of Term + Dropouts	Percent of Dropouts
Beaumont	3,069	10.79
Central	1,518	21.67
Cleveland	2,732	8.60
McKinley	1,399	18.94
Northwest	2,242	8.21
Roosevelt	2,936	17.78
Soldan	3,451	14.43
Southwest	2,623	7.43
Sumner	2,654	10.36
Vashon	2,429	22.40
Work Study	200	13.50
King	961	13.11
Lincoln	309	27.83
Delmar	311	24.43
City-Wide	26,834	13.76

FORMULA: $$\frac{\text{DROPOUT}}{\text{DROPOUT + END OF TERM MEMBERSHIP}}$$

$$= \% \frac{3,693}{26,834} = 13.76$$

The term "dropout" as used in the Board's records includes the following categories:

Moved/Not attending school
Pregnancy/Not attending school
Suspension-Not reassigned
Entered armed service
Entered verified employment
Needed at home
Lack of interest
Non-attendance

Marriage
Physical health
Reason unknown

The withdrawals of high school students by school in the school year 1972-73 is set forth in the following tabulation. Since no statistical record of withdrawals by race is maintained by the Board, no reference to race is possible, other than with regard to the enrollment in each high school:

Percent of Black Enrollment	School	Withdrawals
100.0	Beaumont	190
73.1	Central	140
0.5	Cleveland	170
62.9	McKinley	158
90.4	Northwest	173
7.2	Roosevelt	208
100.0	Soldan	169
8.1	Southwest	172
100.0	Sumner	124
99.9	Vashon	186
98.6	Work Study	12
98.7	King	26
97.9	Lincoln	83
99.7	Delmar	15
	City-Wide	1,826

The term "withdrawals" as used in the Board's records includes the following categories:

Transfer private/parochial
Moved/attending school
Return to elementary school
Missouri Hills-Griscom
Assigned tutorial school
Metro high school
Assigned continuation school

Conduct tending to demoralize
Psychological/psychiatric
diagnosis/treatment
Suspension/reassigned St.
Louis public schools
Death
No return/reason unknown

There is no evidence of segregative action by the Board concerning curriculum, facilities, or withdrawals. The evidence indicates that students of both races have been accorded equal treatment.

11. Magnet schools.

In 1976-77, the Board began its operation of the magnet schools under the consent decree. Seven magnet schools at the elementary level and two magnet high schools were planned, organized, funded through HEW, and made operational by the opening of the 1976-77 school year. All of the magnet schools have city-wide enrollment, with the goal of 50% black and 50% white student attendance.

In 1977-78, the magnet school program was expanded by adding a new Business and Office magnet high school (Lincoln) and by increased enrollment. In 1978-79, all magnet school programs have continued with an enrollment of 1,011 in the high schools, of whom 64.8% are black, and 2,840 in the elementary schools, of whom 67.9% are black.

a. Admissions to the magnet schools.

The policy of the Board in 1976-77 with respect to admissions to magnet schools of white nonpublic school children was propounded to conform to the Office of Civil Rights (hereinafter OCR) requirements.

The policy was as follows: When a student who had never before attended a St. Louis public school (i.e., students transferring in from county public schools and students attending private or parochial schools) applied for and was accepted into a magnet school, OCR recorded that transaction as a transfer of that student from the neighborhood school to the magnet school.

Magnet school admission guidelines state that a student may not be admitted to a magnet school if that student's transfer from the neighborhood school would result in increased racial isolation of that neighborhood school.

On July 5, 1977, the Office of Education (hereinafter OE) informed the Board that it was ineligible for funding under the Emergency School Aid Act, 20 U.S.C. 1601, et seq., (hereinafter ESAA) partly because of an OE finding that the 1976-77 magnet school program did not result in a reduction of racial isolation in the schools. One of the reasons for the OE finding was that white non-public students admitted to magnet schools were treated as transfers from neighborhood schools. The Board, seeking to revoke the OE finding, stated that this treatment of formerly nonpublic students resulted in a significant distortion of the actual increases in racial isolation in the neighborhood schools feeding the magnet schools. Many of these nonpublic students were white and so their admission to the magnet schools made it appear that they were being allowed to flee predominantly black feeder schools when in fact that was not true. It is unwarranted to assume that children who did not previously attend the public school system would suddenly enroll in the neighborhood school. To the

contrary, most of those involved attended parochial and private schools exclusively in the past and would continue to attend nonpublic schools but for the attractive magnet school program.

The overall effect of the above policy was to discourage white students from entering or re-entering the public school system at a time when white students were desperately needed to integrate more schools.

The OE finding of a failure to reduce racial isolation in the magnet school program was revoked and on August 10, 1977, St. Louis school officials worked out a mutually acceptable addendum to the school district's ESAA plan for 1977-78 with OCR officials. Nonpublic school students requesting admission to the magnet school program were considered according to the following guidelines:

1. Magnet schools must be no less than 50% nor more than 70% black.

2. A transfer to a magnet school must not increase racial isolation at the feeder neighborhood school. This requires that the release of a nonminority (white) student from a racially isolated sending school (majority black school) shall take place only after there is a prior release of twice the number of minority students otherwise required.

3. In filling available seats in the magnet schools, public school children will be

considered and processed first. Only after all public school applicants have been placed in magnet schools, within the limits of the above numerical formulae, will applicants from nonpublic schools be considered.

4. Applicants from nonpublic schools will not be treated as applying from the neighborhood school of their residence. Applicants from nonpublic schools will be allowed into magnet schools on a ratio of one white nonpublic school student for every five black students. The five black students need not necessarily be from the public school in the neighborhood of the white nonpublic school child's residence nor must they necessarily be admitted to the same magnet school as that attended by the white nonpublic school child.

Plaintiffs Adams, et al., assert that there was no reasonable basis for insisting that white and parochial students be restricted in admissions to the magnet schools. The discriminatory policy likely has had the effect of contributing to resegregation in the magnet schools. The Court agrees that the real need in the schools of St. Louis is to encourage more white students to enter the public schools so that there may be a stable plan of integration developed. Any policy which inhibits such a plan is patently wrong. The policy with respect to admission of white nonpublic school students has been abandoned in the school year 1978-79 and the request to declare this practice uncon-

stitutional is denied since the question is now moot.

III. CONCLUSIONS OF LAW.

The Court has jurisdiction of this action pursuant to 28 U.S.C. §§1343(3) and (4), 28 U.S.C. §2201, 42 U.S.C. §§1983, 1988 and 2000d, and the Fourteenth Amendment to the Constitution of the United States.

A. Governing Constitutional Principles.

Section 1 of the Fourteenth Amendment to the United States Constitution provides in part that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The issue in this case is whether the defendants here have denied to the plaintiffs the equal protection of the laws, thereby violating plaintiffs' constitutional rights.

At the time of Plessy vs. Ferguson, 163 U.S. 537 (1896), the Supreme Court of the United States interpreted the Equal Protection Clause as allowing black citizens to be accorded separate but equal treatment under the law. The "separate but equal" doctrine of Plessy, which dealt with railway transportation, was extended to apply to public schools. Cuming vs. County Board of Education, 175 U.S. 528 (1899). Thereafter, state laws mandating separate school systems for black and white students were upheld under the "separate but equal" doctrine.

This construction of the Equal Protection Clause was reversed in Brown vs. Board of Education of Topeka, 347 U.S. 483 (1954) (Brown I), where the Supreme Court held:

> "We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

Brown I, supra, at 495.

The reason for abolishing the "separate but equal" doctrine was that the decision to separate children because of their race in itself implies a difference and inequality in the races. The law cannot countenance such implication in state action.

Brown I was followed by Brown vs. Board of Education, 349 U.S. 294 (1955) (Brown II) which imposed a duty on the states to abolish segregated schools and to provide racially nondiscriminatory schools. Under Brown I and Brown II, the dismantling of dual school systems became a constitutional objective.

Primary responsibility for eliminating segregated schools was directed to school authorities. Where school authorities defaulted or unduly delayed in their duty to implement the new constitutional principles, the district courts were authorized to review the school authorities' actions and to evaluate possible solutions to the problem. The Court in Brown II delineated the wide range of considerations which courts were to review:

". . . the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis. . . ."

Brown II, supra, at 300-01.

Where school authorities failed to apply the new principles, courts were to do so in their place under these guidelines:

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. . . . Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."

Brown II, supra, at 300.

Following the Brown decisions, the focus of school desegregation law was directed to school systems in southern states that refused to dismantle pre-Brown statutorily designated dual schools. Federal courts were consistently called upon to fashion remedies where local school authorities had sought to avoid desegregation.

In Green vs. County School Board, 391 U.S. 430 (1968), involving New Kent County, Virginia, there was no residential segregation, but there were segregated schools for ten years after Brown. The Supreme Court determined in Green that:

> "[T]he Board, by separately busing Negro children across the entire county to the 'Negro' school, and the white children to the 'white' school, is deliberately maintaining a segregated system which would vanish with non-racial geographic zoning."

Green, supra, 391 U.S. at 442, n.6.

The busing described above was done pursuant to the "freedom of choice plan" adopted in New Kent County whereby students could choose to attend a particular school or else automatically be reassigned to whatever school they previously attended. This plan resulted in minimal desegregation, with 85% of blacks choosing to attend the former black school and only 15% of blacks choosing to attend the primarily white school.

The student assignment plans in New Kent County were rejected in Green as being constitutionally deficient. The plan was found to be racially discriminatory in that

it did not achieve a unitary school system. As the Supreme Court noted: "The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about. . . ." Green, supra, 391 U.S. at 436. The Court further stated:

> "School boards such as the respondent then operating state-compelled dual systems were nevertheless charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch."

Green, supra, 391 U.S. at 437-38.

As later defined in Alexander vs. Holmes County Board of Education, 396 U.S. 19 (1969), a unitary school system was one "within which no person is to be effectively excluded from any school because of race or color." Alexander, supra, 396 U.S. at 20.

The Supreme Court in Green also restated the function of the district court in evaluating a school board's actions with regard to desegregation:

> "The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent

> upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in the light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the Court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief."

Green, supra, 391 U.S. at 439.

Whereas the Green case scrutinized racial imbalance in schools in the context of a rural setting where no residential segregation existed,[56] the Supreme Court later considered the urban Charlotte-Mecklenburg system in North Carolina, where residential segregation and resulting racial imbalance were obstructing efforts to achieve unitary schools. Swann vs. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

The Supreme Court in Swann recognized that many changes had taken place (especially in metropolitan areas) in the patterns and the structure of communities, and the growth and shifts in student populations. These changes had a "marked impact on school planning, sometimes neutralizing or negating remedial action before it was fully implemented." Swann, supra, 402 U.S. at 14. These problems and changes had been

aggravated in several school systems by the failure of school authorities, many using subterfuge and dilatory tactics, to desegregate the schools. In light of the above context, the Supreme Court felt it necessary to define in "more precise terms that heretofore the scope of the duty of school authorities and district courts in implementing Brown I and the mandate to eliminate dual systems and establish unitary systems at once." Swann, supra, 402 U.S. at 6.

The Swann case dealt with a pre-Brown state-imposed segregated school system that never achieved a unitary system after Brown. For such a system, the goal of Brown was still to be achieved. "The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation." Swann, supra, 402 U.S. at 15.

In determining whether or not a school system was constitutionally desegregated, the following factors serve as the most important indicia; student assignment, faculty, staff, transportation, extra-curricular activities, and facilities. The Court stated that:

> "Independent of student assignment, where it is possible to identify a "white school" or a "Negro School" simply by reference to the racial composition of teachers and staff, the quality of school buildings and equipment, or the organization of sports activities, a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown.

> "When a system has been dual in these respects, the first remedial responsibility of school authorities is to eliminate invidious racial distinctions."

Swann, supra, 402 U.S. at 18.

Swann held that where dual systems persisted, plans based on racially neutral criteria were not sufficient if they did not in fact remedy the situation created by the violative conduct, that is, if the dual school system was not dismantled.

The Swann decision, in addition to presenting specifics on what constituted maintaining a dual system in violation of the Constitution, also set out specific guidelines on the remedial authority of the courts.

> "In seeking to define even in broad and general terms how far this remedial power extends it is important to remember that judicial powers may be exercised only on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults.
>
> * * * *
>
> As with any equity cases, the nature of the violation determines the scope of the remedy."

Swann, supra, 402 U.S. at 16.

In addition to the limitation on district courts to remedy only the condition that offends the Constitution, the Supreme Court stated that in dismantling a dual school system there could be no requirement of a particular racial balance in each school, grade, or classroom. Swann, supra, 402 U.S. at 24. Accord, Spencer v. Kugler, 404 U.S. 1027 (1972).

The Swann decision spoke of judicial authority to remedy violations by school authorities. The case expressly left unanswered the extent to which a school desegregation decree may be used to remedy other types of state action not attributable to school authorities:

> "We do not reach in this case the question whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree."

Swann, supra, 402 U.S. at 23.

In Keyes v. School District No. 1, Denver, Colo., 413 U.S. 189 (1973), the Supreme Court had occasion to examine school segregation in a new context:

> "This is not a case, however, where a statutory dual system has ever existed. Nevertheless, where plaintiffs prove that the school authorities have carried out a systematic program of segregation affecting a substantial portion of the students,

schools, teachers, and facilities within the school system, it is only common sense to conclude that there exists a predicate for a finding of the existence of a dual school system."

Keyes, supra, 413 U.S. at 201.

The Keyes holding underlines the importance of determining intent in a finding of unlawful segregation:

> ". . . we hold that a finding of intentionally segregative school board actions in a meaningful portion of a school system, as in this case, creates a presumption that other segregated schooling within the system is not adventitious. It establishes, in other words, a prima facie case of unlawful segregative design on the part of school authorities, and shifts to those authorities the burden of proving that other segregated schools within the system are not also the result of intentionally segregative actions. This is true even if it is determined that different areas of the school district should be viewed independently of each other because even in that situation, there is high probability that where school authorities have effectuated an intentionally segregative policy in a meaningful portion of the school system, similar impermissible considerations have motivated their actions in other areas of the system. We emphasize that the

differentiating factor between de jure segregation and so-called de facto segregation to which we referred in Swann is purpose or intent to segregate."

Keyes, supra, 413 U.S. at 208.

Once the burden of proof has shifted to school authorities, the Court noted the following on rebuttal proof:

"In discharging that burden, it is not enough, of course, that the school authorities rely upon some allegedly logical, racially neutral explanation for their actions. Their burden is to adduce proof sufficient to support a finding that segregative intent was not among the factors that motivated their actions. . . . If the actions of school authorities were to any degree motivated by segregative intent and the segregation resulting from those actions continues to exist, the fact of remoteness in time certainly does not make those actions any less "intentional."

"This is not to say, however, that the prima facie case may not be met by evidence supporting a finding that a lesser degree of segregated schooling in the core city area would not have resulted even if the Board had not acted as it did. In Swann, we suggested that at some point in time the relationship between past segregative acts and present segregation may

> become so attenuated as to be incapable of supporting a finding of de jure segregation warranting judicial intervention. 402 U.S., at 31-32. See also Hobson vs. Hansen, 269 F. Supp. 401, 495 (DC 1967), aff'd sub nom. Smuck vs. Hobson, 132 U.S. App. D. C. 372, 408 F.2d 175 (1969)."

Keyes, supra, 413 U.S. at 210-11.

Applicable Supreme Court decisions subsequent to Keyes have concentrated and elaborated on the issues of intent, burden of proof, and remedy and the interplay among these issues.

In Milliken v. Bradley, 418 U.S. 717 (1974) (Milliken I), the Court noted that significant racial imbalance in schools within an autonomous school district operates simply to shift the burden of proof to the school authorities to show that school assignments are not discriminatory. This shift in the burden of proof is "a very different matter from equating racial imbalance with a constitutional violation calling for a remedy."[57] Milliken I, supra, 418 U.S. at 741, n.19. Accord, Keyes, supra, 413 U.S. at 208; Swann, supra, 402 U.S. at 26.

Washington v. Davis, 426 U.S. 229 (1976),[58] reaffirms the necessity of establishing intentional discriminatory action and purpose as a prerequisite to a finding of constitutional violation:

> "That there are both predominantly black and predominantly white schools in a community is not alone violative of the Equal Protection Clause. The

> essential element of de jure segregation is 'a current condition of segregation resulting from intentional state action.' Keyes v. School Dist. No. 1, 413 U.S. 189, 205 (1973)."

Davis, supra, 426 U.S. at 240. The Court also reasserted the principle that official action will not be held unconstitutional solely because it results in a racially disproportionate impact. "Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution." Id. at 242. Accord, Village of Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 264-65 (1977).[59]

Arlington Heights, supra, states that even in light of disproportionate impact, there must be proof that discriminatory purpose was a motivating factor in the decisions of officials. Where there is proof that an official decision was motivated in part by a racially discriminatory purpose, the burden shifts to the officials to show "that the same decision would have resulted even had the impermissible purpose not been considered." Arlington Heights, supra, 429 U.S. at 270-71, n.21.

In Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977), the Supreme Court addressed the issue of remedy and the need to tailor the remedy commensurate to the specific constitutional violations. The Court ruled:

> "The duty of both the District Court and the Court of Appeals in a case such as this, where mandatory segregation by law of the races in the schools

> has long since ceased, is to first determine whether there was any action in the conduct of the business of the school board which was intended to, and did in fact, discriminate against minority pupils, teachers, or staff. . . . If such violations are found, the District Court in the first instance, subject to review by the Court of Appeals, must determine how much incremental segregative effect these violations had on the racial distribution of the Dayton school population as presently constituted, when that distribution is compared to what it would have been in the absence of such constitutional violations. The remedy must be designed to redress that difference, and only if there has been a systemwide impact may there be a systemwide remedy."

Dayton, supra, 433 U.S. at 420, citing Keyes, supra, 413 U.S. at 213.

Subsequent to the Dayton decision, the Supreme Court vacated the ruling in United States v. School District of Omaha, 541 F.2d 708 (8th Cir. 1976), cert. granted, 433 U.S. 667 (1977). The remedy mandated in Omaha was an extensive plan involving the system-side transportation of pupils. The remedy was based on a previous finding of a system-wide violation.[60] The Court remanded the case for reconsideration in the light of Arlington Heights, supra, and Dayton, supra.[61]

An open question now under review by the Supreme Court as of the date of this

writing is the extent that legal presumptions and inferences, such as those employed in Omaha, may be used to extrapolate from evidence of discrete and isolated constitutional violations, the existence of a system-wide violation, necessitating a system-wide remedy.[62]

A threshold decision which must be met in this case is whether or not the St. Louis system falls within the ruling of Dayton Board of Education v. Brinkman. This determination first requires a decision as to whether or not the Board's desegregation plan in 1954-56 was effective in achieving a unitary school system.

B. Effectiveness of the 1954-56 Desegregation Plan.

After the decision in Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), the Board of Education of St. Louis had an affirmative duty to dismantle the dual school system. The Board's desegregation plan, which was fully implemented in 1954-56, was effective in disestablishing the dual school system and in achieving a unitary system. The Board completely eliminated race as a requirement or a bar to attend any school in the system. Alexander v. Holmes County Board of Education, 396 U.S. 19, 20 (1969). Students were reassigned to schools on a completely racially neutral basis. The boundaries were redrawn with data that was free of any reference, however, subtle, to race. The plan was not only neutral, but it was effective as well. Green v. County School Board, 391 U.S. 430 (1968). About two-thirds of all students were attending interracial schools after desegregation. The Board's plan resulted in the "meaningful and immediate progress toward disestablishing

state-imposed segregation" as required by Green, supra.

There is no evidence that the Board used any subterfuge or dilatory tactics in achieving the mandate of Brown. The Board acted immediately and decisively to create a unitary school system.

The basis of the unitary school system which the Board adopted after Brown was the neighborhood school. Prior to Brown, the neighborhood school policy was used to assign white children to schools whereas black children were bused elsewhere. After Brown, all children were assigned to their neighborhood schools.

The neighborhood school is not itself suspect as racially discriminatory. Adoption of the neighborhood school policy as to all children pursuant to the desegregation plan resulted in some remaining one race schools. These remaining one race schools must come under close judicial scrutiny to assure that their racial composition is not the result of present or past discriminatory action by school authorities:

> "Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominately of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory."

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 26 (1971).

The cause for some remaining one race or virtually one race schools in St. Louis was the adoption of the neighborhood school. There is no credible evidence which indicates that the racially imbalanced schools were the result of gerrymandering, escapist transfers, or any other discriminatory acts by the Board.

The Board's decision to adopt the neighborhood school was not discriminatory. The Board did not merely rely upon some "allegedly logical, racially neutral explanation for their actions." Keyes v. School District No. 1, Denver, Colo., 413 U.S. 189, 210 (1973). In light of tremendous support by educators, citizens, government policy,[63] and parents, both black and white, of neighborhood schools, the Board has demonstrated that "segregative intent was not among the factors that motivated their actions." Id. The Board's good faith is highlighted by the fact that they published the new school boundaries far in advance of their implementation and invited comments on them from the public and from civic groups representing diverse points of view. No indications were received in 1954 that the boundaries or the neighborhood school basis of assignment were discriminatory. Therefore, so long as neighborhood school attendance zones are not gerrymandered, or pupil assignments otherwise abused so as to foster segregation, the use of neighborhood schools is allowed for the sake of its unique benefits, even though there may be a resulting residentially based racial imbalance in the schools.

Adoption of neighborhood schools comports with guidelines set out in Brown vs. Board of Education, 349 U.S. 294 (1955) (Brown II), where the Court suggested:

> "revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis. . . ."

Id. at 300-01.

The Supreme Court clarified this reference to "compact units" in Swann where the Court advised that revision into compact units must also be effective in achieving desegregation. Swann, supra, 402 U.S. at 27, n.10.

Neighborhood schools also meet the definition of achieving a unitary system as set out in Section 2000c(b) of Title IV of the Civil Rights Act of 1964:

> "'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance."

Swann, supra, 402 U.S. at 17.

Adoption of neighborhood schools in St. Louis did not have the foreseeable consequence of bringing about or maintaining segregation. Omaha, supra, 521 F.2d at 535-36. The demographic history of St. Louis reveals the high mobility of all ethnic groups before Brown. The massive changes in the racial makeup of the City in the late 1950's and 1960's were not foreseeable by the Board.

In sum, this Court finds that the Board's actions with respect to desegregation were taken in good faith and were as effective as practically possible. Davis v. Board of School Comm'rs of Mobile County, 402 U.S. 33, 37 (1971). The duty to desegregate was, therefore, discharged by the Board. The affirmative duty of the Board to abolish the dual school system being discharged, and racial discrimination through official action being eliminated, the City of St. Louis came to the point described by the Supreme Court in Swann:

> "At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems would then be 'unitary' in the sense required by our decision in Green and Alexander.
>
> "It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately

attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary."

Swann, supra, 402 U.S. at 31-32.

C. Burden of Proof.

This Court concludes that the principles stated in Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977), and its progeny are applicable to this case. In order to find constitutional violations it will be necessary for plaintiffs to establish that the Board's actions or inactions were intended to, and did in fact, discriminate against minority pupils, teachers, or staff. If such violations are found, this Court must determine the incremental segregative effect that these violations had on the racial distribution of the St. Louis school population as presently constituted, when that distribution is compared to what it would have been in the absence of such constitutional violations. Dayton, supra, 433 U.S. at 420.

The burden of providing intentional discriminatory action by the Board and that these actions in fact had a segregative effect and that the segregation would not have existed in absence of such action rests with the plaintiffs and plaintiff-intervenors. Dayton, supra, 433 U.S. at 420. The burden will at times shift to the defendants where a prima facie case of discrimination exists. Swann, supra, 402 U.S. at 26. See United States School District of Omaha, 521 F.2d 530, 534-35 (8th Cir. 1975). The defendants then have the burden to show the nonexistence of discriminatory purpose

as a factor that motivated their actions or failures to act or that their discriminatory acts did not have a racial impact or exacerbate segregation. Washington v. Davis, 426 U.S. 229, 243 (1976). See Keyes, supra, 413 U.S. at 210; Omaha, supra, 521 F.2d at 536.

D. Racial Imbalance in the St. Louis Schools.

After St. Louis converted to a unitary school system, dramatic changes occurred in the demography of the City. These changes are fully discussed in the Findings of Fact, supra. These changes were caused by a variety of factors, including actions of federal authorities and housing discrimination. The result was the massive migration of whites from the City and an equally massive intra-city migration of blacks. The population movements as a whole are reflected in the changes of the racial composition of the public school enrollment from 66% white in 1953 to 45.13% white in 1962 and finally 25.5% white in 1978. The movements resulted in substantial racial changes in certain areas of the City, specifically in the west end and northwest St. Louis. These racial changes in turn affected the racial composition of schools in those areas, resulting in a number of racially imbalanced schools. None of these changes and their effect were foreseeable by the Board.

The relationship over a substantial period of time between racially changing residential areas and racially changing schools is complex, but causally related. A school system which assigns pupils to schools under the neighborhood school policy will naturally be affected by this relationship. In St. Louis, the primary

cause of racial imbalance and resegregation in schools is the interaction of the neighborhood school policy with residential segregation which has resulted due to factors unforeseeable by and beyond the influence or control of the Board.

The existence of substantial racial imbalance in a unitary school system, especially one which has previously been segregated by law, creates a prima facie case of unlawful discrimination. Swann, supra, 402 U.S. at 26. The burden of proof is on the Board to show that the racial imbalance is not the result of "present or past discriminatory action on their part." Id. This shift in the burden of proof, however, does not equate racial imbalance with a constitutional violation. Milliken v. Bradley, 418 U.S. 717, 741 (1974) (Milliken I). Although the burden of proof is on the Board to show that racial imbalance in school assignments is not part of prior state-enforced segregation, the existence of the imbalance in St. Louis is not traceable to prior mandatory segregation.

As is noted above, the primary reason for racial imbalance in the St. Louis public schools is adherence to the neighborhood school policy where resegregation was taking place due to factors not attributable to the Board.

Population changes so overwhelmed the actions of the Board, that the Board's actions or omissions to act may not be said to have had the foreseeable effect of causing or maintaining the racial imbalance in the schools. These changes would have taken place despite any efforts of the Board to prevent them, and were not, in fact, hastened by the effects of any actions or

inactions of the Board. The overwhelmingly, inexorable cause of the racial imbalance in the schools is the aggregate movement of individuals in response to economic forces. This Court has found (fully described in Findings of Fact) that resegregation was not the result of gerrymandering boundaries, manipulating feeder patterns, optional attendance zones, abuse of transfers, busing, teacher assignments, curriculum, or any other acts of the Board. The neighborhood school policy has been operated since 1954-56 on a neutral basis, free of manipulation. There is no credible evidence that the Board deviated from the neighborhood school policy when necessary to prevent meaningful desegregation. Attention must also be directed to numerous efforts on the part of the Board to build integrated schools and maintain integrated programs. That many of these programs eventually failed, although in many instances integration was maintained for several years before resegregation negated those efforts, is not evidence of intentional segregation by the Board. Rather, the Board has evidenced its good faith in integrative efforts. In recent years the Board has succeeded in reducing racial isolation in schools, especially with respect to white students. The Board has met its rebuttal burden of proof in demonstrating that its operation of the neighborhood school policy was racially neutral.

The Board's burden of proof in demonstrating that race was not a factor in adhering to the neighborhood school policy where resegregation was taking place must be scrutinized under governing case law.

As a matter of general principle, assigning school children to schools in their neighborhood does not offend the

Constitution. Milliken I, supra, 418 U.S. at 737-41. This is especially true where the neighborhood school policy is maintained free of manipulation. Keyes, supra, 413 U.S. at 245-46.

Likewise, racial imbalance in schools is not in itself violative of the Constitution. Washington v. Davis, supra, 426 U.S. at 240. Accord, Swann, supra, 402 U.S. at 24. As the Supreme Court stated in Dayton (which this Court has held applies in this case):

> "It is clear from the findings of the District Court that [this city] is a racially mixed community, and that many of its schools are either predominantly white or predominantly black. This fact without more, of course, does not offend the Constitution."

Dayton, supra, 433 U.S. at 417. The constitutional right of plaintiffs is to attend a unitary school system in that district. Milliken I, supra, 418 U.S. at 746. Constitutional rights do not extend to attending schools with a particular racial balance.

> "If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial

composition of the school system as a whole."

Swann, supra, 402 U.S. at 24. Other language from Swann makes it clear that "'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance." Id. at 17.

The Board has successfully demonstrated that racially segregated purpose was not a factor in the operation of the neighborhood schools.[64] The Board has met its rebuttal burden of proof that its student assignment policy was racially nondiscriminatory. That the neighborhood school policy came to have a disproportionate impact on the racial balance of schools, and especially black schools, does not mean that it was racially discriminatory, absent segregative purpose. Village of Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 264-65 (1977). Accord, Washington v. Davis, supra, 426 U.S. at 240; Swann, supra, 402 U.S. at 23.

The following language from Swann applies to the problem of de facto racial imbalance in the St. Louis schools:

> "We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious, or ethnic grounds. The target of the cases from Brown I to the present was the dual school system. The elimination of racial discrimination in public schools is a large task and one that should not be

> retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. . . .
>
> "Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools."

Swann, supra, 402 U.S. at 22-23.

This Court specifically concludes that the plaintiffs have failed to meet their burden of proof that there has been any intentional segregation of students caused by the actions or inactions of the Board. This Court also concludes that no actions or inactions of the Board had the foreseeable consequence of bringing about or maintaining segregation. This Court further finds that if any action of the Board resulted in segregation, the Board has successfully met its burden that the act was not done with segregative intent.

IV. POSITIONS AND PLANS OF THE PARTIES.

The intervening plaintiff NAACP takes the position that there has been a constitutional violation based on the present imbalance within the schools. Their expert has suggested a plan (the Stolee plan) which requires massive busing of pupils within

the City of St. Louis. The Court is of the opinion that such a plan is not feasible and would not be a stable plan of integration. The plan, in essence, divides the children on a numberical percentage by race in each school. Based on past experience in other cities where massive busing has been employed, including Atlanta, Boston, Richmond, Detroit, and others, the end result has been to lead to more segregation.

The plan (the Colton plan) suggested by the original plaintiffs, which is also premised on their position that a constitutional violation exists, makes a four-tiered assignment of pupils which will result in black pupils seeing some white pupils even though they may not be in the same classes or grades. This does not appear to be practical to this Court.

The intervening plaintiffs Adams and the City of St. Louis take the position that there has been no constitutional violation and, accordingly, this Court is without power or authority to order any desegregation within the City. This position is untenable. The entry of a consent decree by the Court, and the voluntary actions taken thereunder to reduce racial isolation, is a proper form of resolving a desegregation suit. McDaniel v. Barresi, 402 U.S. 39 (1971).

The defendant Board takes the position that they are bound by the consent decree in which they agreed to desegregate wherever possible and where practical. This Court is of the opinion that regardless of whether or not there has been a constitutional violation by the Board, and this Court has found that there is no constitutional violation by the Board or by the State of Missouri, all parties are bound by the consent decree

and that the Board in that consent decree agreed to desegregate the schools wherever it is possible. The State of Missouri is willing to aid the Board in these efforts by giving technical assistance and financial aid.

The expert for the United States testified that in his opinion a practical, stable plan of integration could not be achieved within the City of St. Louis because of the ratio of 75% black to 25% white students and that to make any effort to place the schools in the same ratio would result in a short period of time in total black schools for the City of St. Louis. He also suggested that the Board should consider soliciting voluntary assistance from the adjoining schools in St. Louis County whereby white students may be bused into the City for the purpose of fostering integration. This Court has no objection to such an effort but is of the opinon that the only way it can be achieved is to offer such quality education within the City of St. Louis that cannot be duplicated in the County. This can be done by a continuation of the magnet school program which could attract white students from the County and from the private and parochial schools within the City which will improve the balance between black and white students.

All parties have expressed a willingness to lend their expertise and their assistance to the Board in working out a practical solution to the problem within the City. With this in mind, the Court will direct the defendant Board to solicit the assistance of all the parties, and of such citizens' groups which have offered their assistance and have volunteered to help, and to come back to the Court within a period of 90 days from the date when the

judgment in this cause becomes final to supplement their plan previously filed under the consent decree.

In drawing up a plan for further integration of the schools, the Board must keep in mind the realities of the situation, the cost and monies available to the Board, and such assistance as it may receive in the future from the federal government, including funds under Title I ESEA, and from the state government in the various programs which those governments have sponsored. Since no constitutional violation has been found, the criteria shall be quality education, which includes integration of the races, where practical and feasible.

The original plaintiffs and other intervening parties have requested the Court to allow attorneys' fees and costs. The Court is of the opinion that none of the parties are entitled to attorneys' fees and that each party shall bear its own costs.

Dated this 12th day of April, 1979.

/s/ James H. Meredith
United States District Judge

APPENDIX A(1)

Racial Composition of the
Enrollment in the
St. Louis Elementary and
Secondary Schools by District

Year 1972-73

BANNEKER:
CENTRAL-VASHON DISTRICT

	Black	White	Total	% Black
CENTRAL HIGH SCHOOL	1,147	422	1,569	73.1
Ames	78	560	638	12.2
Blair	541	79	620	87.3
Bryan Hill	674	72	706	95.5
Clay	51	777	828	6.2
Eliot	632	77	709	89.1
Howard	411	0	411	100.0
Howard Br.	141	2	143	98.6
Irving	673	44	717	93.7
Irving Br.	308	31	339	90.9
Jackson	507	12	519	97.7
Lowell	410	42	452	90.7
Webster	314	189	503	62.4
TOTAL CENTRAL HIGH SCHOOL	5,887	2,267	8,154	72.2
VASHON HIGH SCHOOL	2,635	2	2,637	99.0
Banneker	422	2	424	99.5
Blewett	737	1	738	99.9
Carr	192	0	192	100.0
Carr Lane	448	0	448	100.0
Carver	515	3	518	99.4
Cole	420	0	420	100.0
Cole Br.	205	1	206	99.5

Columbia	803	0	803	100.0
Curtis	194	0	194	100.0
Curtis Br.	80	0	80	100.0
Divoll	374	0	374	100.0
Divoll Br.	120	0	120	100.0
Dunbar	601	3	604	99.5
Dunbar Br.	216	1	217	99.5
Franklin	341	0	341	100.0
Henry	664	0	664	100.0
Jefferson	651	0	651	100.0
Marquette	478	3	481	99.4
Pruitt	230	0	230	100.0
TOTAL VASHON HIGH SCHOOL	10,326	16	10,342	99.8
TOTAL BANNEKER: CENTRAL-VASHON DISTRICT	16,213	2,283	18,496	87.7

McKINLEY-
ROOSEVELT
DISTRICT

	Black	White	Total	% Black
McKINLEY HIGH SCHOOL	924	544	1,468	62.9
Charless	1	339	340	0.3
Chouteau	433	0	433	100.0
Clinton	444	55	499	89.0
Clinton Br.	287	47	334	85.9
Fremont	6	770	776	0.8
Hodgen	727	48	775	93.8
Humboldt	138	344	482	28.6
Lafayette	27	391	418	6.5
L'Ouverture	664	0	664	100.0
Madison	201	71	272	73.9
Peabody	857	7	864	99.2
Sigel	10	619	629	1.6
Waring	290	91	381	76.1
TOTAL McKINLEY HIGH SCHOOL	5,009	3,326	8,335	60.1
ROOSEVELT HIGH SCHOOL	214	2,748	2,962	7.2
Adams	165	397	562	29.4
Fanning	1	790	791	0.9
Froebel	0	618	618	0.0
Garfield	0	618	618	0.0
Grant	0	622	622	0.0
Mann	0	640	640	0.0
Mann Br.	0	50	50	0.0
Monroe	0	479	479	0.0
Mullanphy	29	717	746	5.2
Rock Spring	176	20	196	89.8
Shenandoah	10	523	533	1.9
Shepard	7	626	633	1.1
Sherman	15	627	641	2.3
Sherman Br. #1	6	95	101	5.9

Sherman Br. #2	7	138	145	4.8
Sherman Br. #3	10	107	117	8.5
Wyman	690	111	801	86.1
TOTAL ROOSEVELT HIGH SCHOOL	1,340	9,925	11,265	11.9
TOTAL McKINLEY-ROOSEVELT DISTRICT	6,349	13,251	19,600	32.4

CLEVELAND-
SOUTHWEST
DISTRICT

	Black	White	Total	% Black
CLEVELAND HIGH SCHOOL	14	2,815	2,829	0.5
Blow	4	407	411	1.0
Carondelet	0	238	238	0.0
Gardenville	3	458	461	0.7
Long	0	555	555	0.0
Lyon	0	328	328	0.0
Maddox	14	292	306	4.6
Meramec	0	419	419	0.0
Mt. Pleasant	0	369	369	0.0
Oak Hill	0	480	480	0.0
Scruggs	14	701	715	2.0
Windsor	0	433	433	0.0
Woerner	22	581	603	3.6
Woodward	23	616	639	3.6
TOTAL CLEVELAND HIGH SCHOOL	94	8,692	8,786	1.1
SOUTHWEST HIGH SCHOOL	220	2,494	2,714	8.1
Buder	20	520	540	3.7
Busch	9	374	383	2.3
Dewey	67	520	587	11.4
Gratiot	51	182	233	21.9
Kennard	0	391	391	0.0
Lindenwood	0	331	331	0.0
Longfellow	52	227	279	18.6
Mallinckrodt	78	234	312	25.0
Mason	46	403	449	10.2
Nottingham	2	277	279	0.7
Roe	7	561	568	1.2
Shaw	3	503	506	0.6
Stix	295	101	396	74.5
Wade	124	313	437	28.4
Wilkinson	55	194	249	22.1

TOTAL SOUTHWEST HIGH SCHOOL	1,029	7,625	8,654	11.9
TOTAL CLEVELAND-SOUTHWEST DISTRICT	1,123	16,317	17,440	6.4

BEAUMONT-
SUMNER
DISTRICT

	Black	White	Total	% Black
BEAUMONT HIGH SCHOOL	3,201	0	3,201	100.0
Ashland	1,219	0	1,219	100.0
Ashland Br.	218	0	218	100.0
Bates	608	2	610	99.7
Benton	498	0	498	100.0
Farragut	971	1	972	99.9
Farragut Br. #1	37	1	38	97.4
Farragut Br. #2	11	0	11	100.0
Gundlach	1,042	0	1,042	100.0
Harrison	629	0	629	100.0
Langston	994	0	994	100.0
Langston Br.	107	0	107	100.0
Lexington	543	17	560	97.0
Williams	684	1	685	99.9
Williams Br. #1	225	0	225	100.0
Williams Br. #2	163	0	163	100.0
Yeatman	965	4	969	99.6
TOTAL BEAUMONT HIGH SCHOOL	12,115	26	12,141	99.8
SUMNER HIGH SCHOOL	2,644	0	2,644	100.0
Cote Brilliante	922	0	922	100.0
Cupples	901	3	904	99.9
Euclid	515	0	515	100.0
Euclid Br. #1	52	0	52	100.0

Euclid Br. #2	85	0	85	100.0
Field	579	7	586	98.8
Field Br.	216	0	216	100.0
Hickey	814	0	814	100.0
Marshall	474	1	475	99.8
Marshall Br.	183	0	183	100.0
Riddick	647	0	647	100.0
Simmons	783	1	784	99.9
Simmons Br.	202	0	202	100.0
Stevens	730	0	730	100.0
Turner Middle	539	0	539	100.0
Washington	731	0	731	100.0
TOTAL SUMNER HIGH SCHOOL	11,017	12	11,029	99.9
TOTAL BEAUMONT-SUMNER DISTRICT	23,132	38	23,170	99.8

NORTHWEST-SOLDAN DISTRICT	Black	White	Total	% Black
NORTHWEST HIGH SCHOOL	2,070	219	2,289	90.4
Baden	205	476	681	30.1
Dessalines	291	11	302	96.4
Herzog	453	9	462	98.1
Herzog Br.	126	4	130	96.9
Mark Twain	691	6	697	99.1
Scullin	905	1	906	99.9
Walbridge	981	26	1,007	97.4
Walnut Park	831	37	868	95.7
TOTAL NORTHWEST HIGH SCHOOL	6,553	789	7,342	89.3
SOLDAN HIGH SCHOOL	3,751	0	3,751	100.0
Arlington	634	1	635	99.8
Clark	877	3	880	99.7
Clark Br. #1	288	3	291	99.0
Clark Br. #2	94	0	94	100.0
Cook	832	7	839	99.2
Cook Br.	111	0	111	100.0
Dozier	466	4	470	99.1
Emerson	661	0	661	100.0
Emerson Br.	177	1	178	99.4
Enright Middle	1,225	3	1,228	99.8
Ford	831	0	831	100.0
Ford Br.	246	0	246	100.0
Hamilton	1,005	3	1,008	99.7
Hamilton Br. #1	203	0	203	100.0
Hamilton				

Br. #2	98	2	100	98.0
Hamilton Br. #3	119	0	119	100.0
Hempstead	907	0	907	100.0
Hempstead Br.	99	0	99	100.0
Laclede	911	1	912	99.9
Mitchell	854	0	854	100.0
Mitchell Br.	350	1	351	99.7
Stowe	1,106	1	1,107	99.9
Wheatley	259	0	259	100.0
TOTAL SOLDAN HIGH SCHOOL	16,104	30	16,134	99.8
TOTAL NORTHWEST-SOLDAN DISTRICT	22,647	819	23,476	96.5

(A) Specialized High Schools.

	PUPILS			
	Black	White	Total	% Black
Metro	56	56	112	50.0
(O'Fallon	*	*	*	*)
Delmar	359	1	360	99.7
King	904	12	916	98.7
Lincoln	139	3	142	97.9
Work Study	210	3	213	98.6
Totals	1,668	75	1,743	95.7

*O'Fallon students are counted in the racial count of this academic high school.

(B) Specialized High Schools.

	PUPILS			
	Black	White	Total	% Black
Children's Study School for children taken from their home under Court Order	14	11	25	56.0
City Hospital for hospitalized pupils	7	1	8	87.5
Continued Education for pregnant girls	252	4	256	98.4
Gallaudet for children with hearing and speech defects	69	21	90	76.7

Glennon Memorial Hospital for hospitalized pupils	5	10	15	33.3
Griscom for delinquent children, temporary detention	50	16	66	75.8
Michael for orthopedically handicapped children	73	45	118	61.9
Missouri Hills for delinquent children	70	13	83	84.3
Phillips Hospital for hospitalized pupils	16	1	17	94.1
St. Louis Children's Hospital for hospitalized pupils	12	2	14	85.7
Special #1 for mentally retarded pupils	7	75	82	8.5
Special #48 for mentally retarded pupils	99	0	99	100.0

Special #80 for mentally retarded pupils	65	6	71	91.5
Totals	739	205	944	78.3

APPENDIX A(2)

Racial Composition of the
Enrollment in the St. Louis
Elementary and Secondary Schools
by District

Year 1975-76

BANNEKER:
CENTRAL-VASHON DISTRICT

	Black	White	Total	% Black
CENTRAL HIGH SCHOOL	1,787	163	1,950	91.6
Ames	86	393	479	18.0
Blair	365	44	409	89.2
Bryan Hill	550	0	550	100.0
Clay	122	552	674	18.1
Eliot	475	13	488	97.3
Howard	294	0	294	100.0
Howard Br.	128	3	131	97.7
Irving	559	17	576	97.0
Jackson	364	8	372	97.8
Lowell	363	13	376	96.5
Webster	478	66	544	87.9
TOTAL CENTRAL HIGH SCHOOL	5,571	1,272	6,843	81.4
VASHON HIGH SCHOOL	1,960	0	1,960	100.0
Banneker	290	0	290	100.0
Blewett	514	1	515	99.8
Carr	296	3	299	99.0
Carr Lane	361	0	361	100.0
Carver	446	3	449	99.3
Cole	418	0	418	100.0
Columbia	621	0	621	100.0
Dunbar	502	0	502	100.0

Dunbar Br.	141	0	141	100.0
Franklin	341	0	341	100.0
Henry	521	0	521	100.0
Jefferson	584	0	584	100.0
Marquette	314	3	317	99.1
TOTAL VASHON HIGH SCHOOL	7,309	10	7,319	99.9
TOTAL BANNEKER: CENTRAL-VASHON DISTRICT	12,880	1,282	14,162	90.9

McKINLEY-ROOSEVELT DISTRICT

	Black	White	Total	% Black
McKINLEY HIGH SCHOOL	1,040	435	1,475	70.5
Charless	0	302	302	0.0
Chouteau	302	1	303	99.7
Clinton	378	26	404	93.6
Clinton Br.	157	2	159	98.7
Fremont	9	627	636	1.4
Hodgen	510	14	524	97.3
Humboldt	83	213	296	28.0
Lafayette	5	279	284	1.8
L'Ouverture	506	1	507	99.8
Madison	160	26	186	86.0
Peabody	764	2	766	99.7
Sigel	41	437	478	8.6
Waring	277	55	332	83.4
TOTAL McKINLEY HIGH SCHOOL	4,232	2,420	6,652	63.6
ROOSEVELT HIGH SCHOOL	380	2,395	2,775	13.7
Adams	264	194	458	57.6
Fanning	4	667	671	0.6
Froebel	0	597	597	0.0
Garfield	0	578	578	0.0
Grant	1	592	593	0.2
Mann	0	648	648	0.0
Monroe	0	380	380	0.0
Mullanphy	307	436	743	41.3
Rock Spring	204	6	210	97.1
Shenandoah	38	515	553	6.9
Shepard	14	517	531	2.6
Sherman	80	528	608	13.2
Sherman Br. #1	12	75	87	13.8
Sherman Br. #2	19	194	213	8.9

Wyman	714	36	750	95.2
TOTAL ROOSEVELT HIGH SCHOOL	2,037	8,358	10,395	19.6
TOTAL McKINLEY-ROOSEVELT DISTRICT	6,269	10,778	17,047	36.8

CLEVELAND-SOUTHWEST DISTRICT

	Black	White	Total	% Black
CLEVELAND HIGH SCHOOL	25	2,623	2,648	0.9
Blow Middle	33	360	393	8.4
Gardenville	1	387	388	0.3
Long	0	502	502	0.0
Lyon	3	441	444	0.7
Maddox	9	282	291	3.1
Meramec	0	373	373	0.0
Mt. Pleasant	0	304	304	0.0
Oak Hill	0	375	375	0.0
Scruggs	47	607	654	7.2
Windsor	0	403	403	0.0
Woerner	17	383	400	4.2
Woodward	70	491	561	12.5
TOTAL CLEVELAND HIGH SCHOOL	205	7,531	7,736	2.6
SOUTHWEST HIGH SCHOOL	403	2,098	2,501	16.1
Buder	37	427	464	8.0
Busch	7	367	374	1.9
Dewey	40	466	506	7.9
Kennard	0	261	261	0.0
Lindenwood	0	273	273	0.0
Longfellow	43	139	182	23.6
Mallinckrodt	62	172	234	26.5
Mason	31	317	348	8.9
Nottingham	0	193	193	0.0
Roe	0	487	487	0.0
Shaw	0	224	224	0.0
Stix	297	37	334	88.9
Wade	155	200	355	43.7
Wilkinson	38	157	195	19.5

TOTAL SOUTHWEST HIGH SCHOOL	1,113	5,818	6,931	16.1
TOTAL CLEVELAND-SOUTHWEST DISTRICT	1,318	13,349	14,667	9.0

BEAUMONT-SUMNER DISTRICT

	Black	White	Total	% Black
BEAUMONT HIGH SCHOOL	3,178	0	3,178	100.0
Ashland	960	0	960	100.0
Ashland Br.	176	0	176	100.0
Bates	405	1	406	99.8
Benton	373	0	373	100.0
Farragut	701	0	701	100.0
Gundlach	813	2	815	99.8
Harrison	576	0	576	100.0
Langston	860	4	864	99.5
Lexington	418	2	420	99.5
Williams	502	0	502	100.0
Williams Br. #1	163	0	163	100.0
Williams Br. #2	132	0	132	100.0
Yeatman	966	0	966	100.0
TOTAL BEAUMONT HIGH SCHOOL	10,223	9	10,232	99.9
SUMNER HIGH SCHOOL	2,504	0	2,504	100.0
Cote Brilliante	426	0	426	100.0
Cupples	762	2	764	99.7
Euclid	370	0	370	100.0
Euclid Br.	62	0	62	100.0
Field	500	3	503	99.4
Field Br.	164	1	165	99.4
Hickey	669	0	669	100.0
Marshall	415	1	416	99.8
Marshall Br.	88	0	88	100.0
Riddick	442	0	442	100.0
Simmons	677	0	677	100.0
Stevens	512	0	512	100.0

Turner Middle	632	0	632	100.0
Washington	628	0	628	100.0
TOTAL SUMNER HIGH SCHOOL	8,851	7	8,858	99.9
TOTAL BEAUMONT-SUMNER DISTRICT	19,074	16	19,090	99.9

NORTHWEST-SOLDAN DISTRICT

	Black	White	Total	% Black
NORTHWEST HIGH SCHOOL	2,671	24	2,695	99.1
Baden	459	224	683	67.2
Herzog	450	0	450	100.0
Herzog Br.	114	0	114	100.0
Mark Twain	786	3	789	99.6
Mark Twain Br.	376	2	378	99.5
Scullin	841	1	842	99.9
Walbridge	992	4	996	99.6
Walnut Park	841	5	846	99.4
Walnut Park Br.	274	1	275	99.6
TOTAL NORTHWEST HIGH SCHOOL	7,804	264	8,068	96.7
SOLDAN HIGH SCHOOL	2,131	0	2,131	100.0
Enright 9th Gr.	789	0	789	100.0
Arlington	567	0	567	100.0
Clark	703	0	763	100.0
Clark Br. #1	243	0	243	100.0
Clark Br. #2	120	0	120	100.0
Clark 7/8	237	0	237	100.0
Cook	623	1	624	99.8
Cook Br.	121	0	121	100.0
Dozier	378	0	378	100.0
Emerson	679	0	679	100.0
Ford	593	0	593	100.0
Ford Br.	203	0	203	100.0
Hamilton	875	6	881	99.3

Hamilton Br. #1	159	0	159	100.0
Hamilton Br. #2	120	0	120	100.0
Hamilton Br. #3	226	7	233	97.0
Hempstead	853	1	854	99.9
Hempstead Br.	89	0	89	100.0
Laclede	711	0	711	100.0
Mitchell	773	0	773	100.0
Mitchell Br.	247	0	247	100.0
Stowe	930	1	931	99.9
TOTAL SOLDAN HIGH SCHOOL	12,370	16	12,386	99.9
TOTAL NORTHWEST-SOLDAN DISTRICT	20,174	280	20,454	98.6

RACIAL COMPOSITION OF THE ENROLLMENT IN:

(A) Specialized High Schools

	Black	White	Total	% Black
Metro	81	57	138	58.7
(O'Fallon	*	*	*	*)
Delmar	184	0	184	100.0
King	582	4	586	99.3
Lincoln	229	0	229	100.0
Work Study	226	2	228	99.1
Totals	1,302	63	1,365	95.4

*O'Fallon students are counted in the racial count of their academic high school.

(B) Special Elementary Schools (Twelve)*

	Black	White	Total	% Black
Children's Study School for children taken from their home under Court Order	13	7	20	65.0
City Hospital for hospitalized pupils	5	5	10	50.0
Continued Education for pregnant girls	238	0	238	100.0
Gallaudet for children with hearing and speech defects	72	22	94	76.6

Glennon Memorial Hospital for hospitalized pupils	1	7	8	12.5
Griscom for delinquent children, temporary detention	84	24	108	77.8
Michael for orthopedically handicapped children	81	43	124	65.3
Missouri Hills for delinquent children	44	6	50	88.0
Phillips Hospital for hospitalized pupils	16	0	16	100.0
St. Louis Children's Hospital for hospitalized pupils	12	2	14	85.7
Special #1 for mentally retarded pupils	4	54	58	6.9
Special #48 for mentally retarded pupils	85	0	85	100.0
Totals	655	170	825	79.4

*Special #80 is now housed in Hodgen School Building. The enrollment is included with Hodgen School.

APPENDIX A(3)

Racial Composition of the Enrollment in the St. Louis Elementary and Secondary Schools by District

Year 1978-79

Black	White	Total
54,584 (74.5%)	18,638 (25.5%)	73,222

Racial Composition of the Enrollment
in the St. Louis Elementary and Secondary
Schools by District

Year 1978-79

9-29-78

BANNEKER:
CENTRAL-VASHON DISTRICT*

	Black	White	Total	% Black
CENTRAL HIGH SCHOOL	1,315	131	1,446	90.9
Blair	285	37	322	88.5
Bryan Hill	598	0	598	100.0
Clay	228	295	523	43.6
Eliot	519	8	527	98.5
Howard	161	6	167	96.4
Howard Br.	132	0	132	100.0
Irving	587	22	609	96.4
Jackson	299	12	311	96.1
Lowell	358	18	376	95.2
Webster	353	56	409	86.3
TOTAL CENTRAL SUB-DISTRICT	4,835	585	5,420	89.2
VASHON HIGH SCHOOL	1,301	1	1,302	99.9
Banneker	257	1	258	96.6
Carr Lane	234	0	234	100.0
Carver	320	1	321	99.7
Cole	372	0	372	100.0
Columbia	519	0	519	100.0
Dunbar	461	1	462	99.8
Franklin	439	1	440	99.8
Henry	493	26	519	95.0
Jefferson	556	0	556	100.0

Marquette	299	21	320	93.4
Blewett Junior High:				
Secondary	413	3	416	99.3
Elementary	261	1	262	99.6
TOTAL VASHON SUB-DISTRICT	5,925	56	5,981	99.1
TOTAL BANNEKER: CENTRAL-VASHON DISTRICT	10,760	641	11,401	94.4

*Pruitt Alternative High School is in this district. Enrollment data are shown with Specialized High Schools.

BEAUMONT-SUMNER DISTRICT

	Black	White	Total	% Black
BEAUMONT HIGH SCHOOL	2,166	0	2,166	100.0
Ashland	740	1	741	99.9
Ashland Br.	124	1	125	99.2
Bates	313	0	313	100.0
Benton	327	0	327	100.0
Farragut	586	0	586	100.0
Gundlach	667	0	667	100.0
Harrison	482	0	482	100.0
Langston	649	0	649	100.0
Lexington	386	5	391	98.7
Williams	453	0	453	100.0
Williams Br. #1	163	0	163	100.0
Yeatman	848	0	848	100.0
TOTAL BEAUMONT SUB-DISTRICT	7,904	7	7,911	99.9
SUMNER HIGH SCHOOL	2,006	1	2,007	99.9
Cote Brilliante	356	0	356	100.0
Cupples	653	1	654	99.8
Euclid	342	0	342	100.0
Field	286	0	286	100.0
Hickey	550	0	550	100.0
Marshall) Marshall) Br.)	458	0	458	100.0
Riddick	318	0	318	100.0
Simmons	578	0	578	100.0
Stevens	408	0	408	100.0
Turner Middle	580	1	581	99.8

Washington	485	0	485	100.0
TOTAL SUMNER SUB-DISTRICT	7,020	3	7,023	99.9
TOTAL BEAUMONT-SUMNER DISTRICT	14,924	10	14,934	99.9

CLEVELAND-SOUTHWEST DISTRICT

	Black	White	Total	% Black
CLEVELAND HIGH SCHOOL	81	1,968	2,049	4.0
Blow	35	306	341	10.3
Gardenville	43	227	270	15.9
Long	61	339	400	15.3
Lyon	1	318	319	0.3
Maddox	3	193	196	1.5
Meramec	1	320	321	0.3
Mt. Pleasant	2	216	218	0.9
Oak Hill	24	313	337	7.1
Scruggs	51	407	458	11.1
Windsor	0	290	290	0.0
Woerner	87	151	238	36.6
Woodward	137	345	482	28.4
TOTAL CLEVELAND SUB-DISTRICT	526	5,393	5,919	8.9
SOUTHWEST HIGH SCHOOL	591	1,438	2,029	29.1
Buder	72	251	323	22.3
Busch	53	224	277	19.1
Dewey	192	279	471	40.8
Kennard	43	261	304	14.1
Lindenwood	72	146	218	33.0
Longfellow	62	78	140	44.3
Mason	49	239	288	17.0
Nottingham	53	110	163	32.5
Roe	85	291	376	22.6
Wilkinson	76	58	134	56.7
TOTAL SOUTHWEST SUB-DISTRICT*	1,348	3,375	4,723	28.5

TOTAL CLEVELAND-SOUTHWEST DISTRICT	1,874	8,768	10,642	17.6

*Shaw School Kg. and Primary in Southwest Sub-District. Enrollment included in Magnet School location tabulation.

McKINLEY-ROOSEVELT DISTRICT*

	Black	White	Total	% Black
McKINLEY HIGH SCHOOL	820	313	1,133	72.4
Charless	0	213	213	0.0
Chouteau	207	1	208	99.5
Clinton	420	22	442	95.0
Fremont	9	452	461	2.0
Hodgen	280	20	300	93.3
Lafayette	138	215	353	39.1
L'Ouverture	336	6	342	98.2
Peabody	682	0	682	100.0
Sigel	66	330	396	16.7
TOTAL McKINLEY SUB-DISTRICT	2,958	1,572	4,530	65.3
ROOSEVELT HIGH SCHOOL	740	1,472	2,212	33.5
Adams	339	194	533	63.6
Fanning	7	574	581	1.2
Froebel	6	518	524	1.1
Garfield	47	433	480	9.8
Grant	4	487	491	0.8
Mann	2	514	516	0.4
Monroe	55	309	364	15.1
Mullanphy	674	174	848	79.5
Shenandoah	41	339	380	10.8
Shepard	77	422	499	15.4
Sherman) Sherman) Br. #1)	153	320	473	32.3
Wyman	595	26	621	95.8

TOTAL ROOSEVELT SUB-DISTRICT	2,740	5,782	8,522	32.1
TOTAL McKINLEY-ROOSEVELT DISTRICT	5,698	7,354	13,052	43.7

*Metro High School and Rock Spring Alternative High School are in this district. Enrollment data are shown with Specialized High Schools.

NORTHWEST-SOLDAN DISTRICT

	Black	White	Total	% Black
NORTHWEST HIGH SCHOOL	1,650	21	1,671	98.7
Baden	551	110	661	83.4
Herzog)	508	0	508	100.0
Herzog) Br.)				
Mark Twain	565	1	566	99.8
Mark Twain Branch	315	0	315	100.0
Scullin	636	0	636	100.0
Walbridge	729	4	733	99.5
Walnut Park	622	0	622	100.0
Walnut Park Branch	253	0	253	100.0
TOTAL NORTHWEST SUB-DISTRICT	5,829	136	5,965	97.7
SOLDAN HIGH SCHOOL	1,524	1	1,525	99.9
Arlington	447	0	447	100.0
Clark	373	0	373	100.0
Clark Branch 1	218	0	218	100.0
Clark Branch 2	173	0	173	100.0
Clark 7/8	190	0	190	100.0
Cook	574	1	575	99.8
Cook Branch	187	0	187	100.0
Emerson	512	0	512	100.0
Ford	524	0	524	100.0
Hamilton	463	0	463	100.0
Hamilton Br. #2	218	0	218	100.0

Hamilton Br. #3	207	5	212	97.6
Hempstead	720	2	722	99.7
Hempstead Branch	132	0	132	100.0
Laclede	575	1	576	99.8
Mitchell	712	1	713	99.9
Mitchell Branch	214	0	214	100.0
Stowe	712	0	712	100.0
Enright 9th Gr. Center Secondary	538	1	539	99.8
Elementary	201	0	201	100.0
TOTAL SOLDAN SUB-DISTRICT	9,414	0	9,426	99.9
TOTAL NORTHWEST-SOLDAN DISTRICT	15,243	148	15,391	99.0

RACIAL COMPOSITION OF ENROLLMENT
IN MAGNET SCHOOL LOCATIONS*
YEAR 1978-79

	Black	White	Total	% Black
SECONDARY				
Math and Science H.S. (DeAndreis)	246	129	375	65.6
Visual and Performing Arts (Humboldt)	300	174	474	63.3
Business and Office H.S. (Lincoln)	109	53	162	67.3
SECONDARY TOTALS	655	356	1,011	64.8
ELEMENTARY				
Academy of Basic Instruction (Waring)	354	31	385	91.9
Academy of Basic Instruction (Mallinckrodt)	215	121	336	64.0
Action Learning and Career Ed. (Madison)	160	87	247	67.8

Computer Managed Learning: P.L.A.N. (Ames)	366	177	543	67.4
Individually Guided Education (Wade)	247	191	438	56.4
Investigative Learning Center (Stix)	340	146	486	70.0
Visual and Performing Arts Center (Shaw)	245	209	454	54.0
ELEMENTARY TOTALS	1,927	962	2,889	66.7
GRAND TOTALS	2,582	1,318	3,900	66.2

*Pupil count shows total enrollment in the location, comprising those pupils in Magnet School programs (as shown on following page) and others, including Kindergarten and Primary.

RACIAL COMPOSITION OF ENROLLMENT
IN MAGNET SCHOOL PROGRAMS*
YEAR 1978-79

	Black	White	Total	% Black
SECONDARY				
Math and Science H.S. (DeAndreis)	246	129	375	65.6
Visual and Performing Arts H.S. (Humboldt)	300	174	474	63.3
Business and Office H.S. (Lincoln)	109	53	162	67.3
SECONDARY TOTALS	655	356	1,011	64.8
ELEMENTARY				
Academy of Basic Instruction (Waring)	354	31	385	91.9
Academy of Basic Instruction (Mallinckrodt)	215	121	336	64.0
Action Learning and Career Ed. (Madison)	160	87	247	67.8

Computer Managed Learning: P.L.A.N. (Ames)	366	177	543	67.4
Individually Guided Education (Wade)	247	191	438	56.4
Investigative Learning Center (Stix)	340	146	486	70.0
Visual and Performing Arts Center (Shaw)	245	160	405	60.5
ELEMENTARY TOTALS	1,927	913	2,840	67.9
GRAND TOTALS	2,582	1,269	3,851	67.0

This tabulation shows the numbers of pupils in the locations indicated who are enrolled in the Magnet School programs. (See preceding page for total enrollment in these locations.)

RACIAL COMPOSITION OF ENROLLMENTS
IN SPECIALIZED HIGH SCHOOLS AND
SPECIAL ELEMENTARY SCHOOLS
YEAR 1978-79

(A) SPECIALIZED HIGH SCHOOLS*

	Black	White	Total	% Black
Metro	84	72	156	53.8
*O'Fallon 9th and 10th Gr.	1,559	95	1,654	94.3
Delmar	133	0	133	100.0
King	428	3	431	99.3
Work Study	200	0	200	100.0
Pruitt Alternatives:				
Secondary	269	8	277	97.1
Elementary	30	3	33	90.9
Rock Spring				
Secondary	198	16	214	92.5
Elementary	13	7	20	65.0
SPECIALIZED HIGH SCHOOL TOTALS	2,914	204	3,118	93.5

(B) SPECIAL ELEMENTARY SCHOOLS**

Children's Study	11	6	17	64.7
City Hospital	2	2	4	50.0
Continued Education	179	1	180	99.4
Gallaudet	70	34	104	67.3
Glennon Memorial Hospital	3	6	9	33.3
Griscom	68	28	96	70.8
Lutheran Hospital	0	8	8	0.0
Michael	86	38	124	69.4

Missouri Hills	47	15	62	75.8
Phillips Hospital	8	0	8	100.0
St. Louis Children's Hospital	13	2	15	86.7
Smith	12	55	67	17.9
Rhoda	90	0	90	100.0
SPECIAL ELEMENTARY SCHOOL TOTALS	589	195	784	75.1

*O'Fallon Co-op students in Gr. 11-12 are counted in the enrollment data of their respective academic high schools, as are O'Fallon Branch Co-ops.

**Special Schools with separate administrators; not part of other schools. Provision is made for high-school students as needed.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, A MINOR BY MINNIE LIDDELL HIS MOTHER AND NEXT FRIEND and MINNIE LIDDELL	)	
JOANNA GOLDSBY, A MINOR BY BARBARA GOLDSBY HER MOTHER AND NEXT FRIEND and BARBARA GOLDSBY	)	
DEBORAH YARBER, A MINOR BY SAMUEL YARBER HER FATHER AND NEXT FRIEND AND SAMUEL YARBER	)	
NATHALIE MOORE, A MINOR BY LOUISE MOORE HER MOTHER AND NEXT FRIEND AND	)	
LOUISE MOORE	)	Cause No. 72C 100(1)
RACHELLE LE GRAND, A MINOR BY LOIS LE GRAND HER MOTHER AND NEXT FRIEND AND LOIS LE GRAND	)	
On behalf of themselves and all other school age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri	)	

Plaintiffs,)
)
vs.)
)
THE BOARD OF EDUCATION OF)
THE CITY OF ST. LOUIS,)
STATE OF MISSOURI)
)
and)
)
DANIEL L. SCHLAFLY)
FREDERICK E. BUSSE)
REV. JAMES L. CUMMINGS)
MALCOLM W. MARTIN)
GORDON L. BENSON)
MRS. ANITA L. BOND)
MRS. JOYCE BOWEN)
HENRY M. GRICH, JR.)
MRS. ERMA J. LAWRENCE)
REV. DONALD E. MAYER)
LAWRENCE MOSER)
CHARLES HARRIS)
)
individually in their)
official capacities as)
members of the Board of)
Education of the City of)
St. Louis, State of)
Missouri)
)
and)
)
ROBERT E. WENTZ)
)
in his official capacity as)
Superintendent of Schools)
of the City of St. Louis)
)
and)
)
JULIUS C. DIX)
BENJAMIN M. PRICE)
ROBERT W. BERNTHAL)

DAVID J. MAHAN)
CHARLES BRASFIELD)
)
Individually in their)
official capacities as)
District Superintendents of)
the Board of Education of)
the City of St. Louis,)
State of Missouri)
)
Defendants.)

CONSENT JUDGMENT AND DECREE

On this 24th day of December, 1975, the parties hereto having appeared by counsel, and having consented, in the interest of the settlement of this litigation, as well as in the interest of saving the time, burden and expense of further hearings, subject to the approval of the Court, to the making and entering of this Judgment, as per memorandum filed herein under the date hereof, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction of the subject matter of this class action and of the parties hereto.

2. This Judgment and Decree is made and entered upon the Stipulation of Facts as amended and supplemented and upon the consent of the parties.

3. Nothing herein contained shall be deemed to be an admission on the part of defendants that the charges contained in plaintiffs' Complaint, as amended, are true. However, notwithstanding the actions taken by the Board subsequent to Brown v.

Board of Education of Topeka, 347 U.S. 483, as of this date hereof, segregation is present, as a matter of fact, in the Public School System of the City of St. Louis, in the particulars itemized in said Stipulation of Facts.

4. Defendants, their agents, officers, employees and successors, and all those in active concert and participation with them shall be enjoined and prohibited from discriminating on the basis of race or color in the operation of the School District of the City of St. Louis, and shall be required to take affirmative action to secure unto plaintiffs their right to attend racially nonsegregated and nondiscriminatory schools, and defendants will afford unto plaintiffs equal opportunities for an education in a nonsegregated and nondiscriminatory school district, and shall be required to take the affirmative action hereinafter set forth.

5. With regard to the personnel of the St. Louis public schools, the defendants are directed and ordered to take the following measures which are necessary or proper in order to reduce racial segregation:

a) Effective before the beginning of the 1976-1977 school year, defendants shall have planned, developed and carried out a program through volunteers and, if necessary, through mandatory appointments and assignments, to provide a minimum of two regular classroom teachers and no less than 10% of the minority teachers and other staff of either race in each school of the system.

b) The minimum percentages provided for in the preceding paragraph shall

be increased by defendants to no less than 20% of the minority teachers and other staff of either race in each school of the system before the beginning of the 1977-1978 school year, and to 30% of the teachers and other staff before the beginning of the 1978-1979 school year.

6. The measures required to be taken by the Board under the provisions of paragraph 5 hereof shall be taken notwithstanding any already signed and approved contract; and the tenure or seniority of teachers or other certificated personnel shall not be used to excuse or justify any lack of compliance with the provisions hereof.

7. Employees of the Board, whether certificated or not, shall not be discriminated against as to hiring, rehiring, promotion, dismissal, suspension or assignment on the ground of race or color, all subject to the procedural provisions of Title VII of the Civil Rights Act of 1964, as amended.

8. To the extent which is consistent with the proper operation of the school system as a whole, defendants shall locate any new schools, lease new classroom facilities or substantially expand existing schools with the objective of eradicating the effects of past and present segregation in the public schools of the City of St. Louis.

9. Before the beginning of the 1977-1978 school year, defendants shall make a study of realignments of all elementary feeder schools to the academic high schools for the purpose of reducing racial isolation and segregation at the said high schools, and shall submit a report thereon

to the Court, on or before January 15, 1977, with implementation to begin September, 1977.

10. The defendants are hereby ordered to make a study and report to the Court on or before May 1, 1976 as to whether or not the following items will assist in eliminating or reducing segregation:

a) Establishing elementary magnet schools with specialized curriculum, having an open enrollment by application.

b) Establishing high schools for the study of the visual and performing arts, for the study of mathematics and physical and natural sciences, and other subject areas, such schools having open enrollment by city-wide application.

c) Recognizing that the above measures are basically experimental in nature, a study of the feasibility of curriculum improvements or other changes that should be instituted in the system as a whole shall be undertaken for the purpose of increasing the quality of education throughout the system, all within the context of reducing racial isolation in the schools and with the goal of desegregating the school system. A report shall be made to the Court by May 1, 1976, with implementation beginning with the school year 1976-1977.

11. Defendants are required to file with the Court, within sixty days from the opening day of the 1976-1977 school year a report setting forth the following information:

a) Tabulation by race of the enrollment in each school of the district.

b) List of each student, by name and address, who applied for transfer stating whether the application was granted, or, if not, the reason for the denial.

c) Tabulation of teachers by race for each school, listing the assigned grade or grades, and the vacancies which have been filed by the hiring of teachers from outside the system at each of the schools.

12. Defendants shall simultaneously mail copies of all reports filed with the Court to counsel for the plaintiffs. Plaintiffs' counsel shall be advised as to actions undertaken by the defendants in compliance with this Judgment.

13. Costs shall be taxed against the defendant Board of Education of the City of St. Louis and a reasonable attorneys' fee and expenses will be allowed against it and in favor of counsel for the plaintiffs.

14. Jurisdiction is retained for the purpose of enabling any of the parties to this Judgment to apply to this Court at any time for such further orders and directives as may be necessary or appropriate for the construction or carrying out of this Judgment.

Dated this 24th day of December, 1975.

/s/ James H. Meredith
U. S. District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Craton Liddell, a minor, et al., Plaintiffs, and Earline Caldwell, et al., and The National Association for the Advancement of Colored People, and City of St. Louis, and Janice Adams, et al., and Mary Puleo, et al., representing the Involved Citizens Committee, and United States of America,	)	
Plaintiffs-Intervenors,	)	Cause No.
vs.	)	72-100C (1)
The Board of Education of the City of St. Louis, State of Missouri, and Daniel L. Schlafly, et al., and The State of Missouri, et al., Defendants.	)	

JUDGMENT

A memorandum dated this day is hereby

incorporporated into and made a part of this judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Board of Education of the City of St. Louis shall within 90 days from the date this becomes a final judgment supplement its plan filed under the consent decree by filing a plan with such changes as the Board deems appropriate under this decision. In formulating such a plan, the Board will consult with and receive the input of all parties to this litigation and such citizen groups as are available and have offered to assist in the implementation of a plan.

The Court has specifically found that there has been no intentional segregation of students by the actions or inactions of the Board and that there has been no constitutional violation by the defendants. In light of this finding the Court directs that the formulation of any plan under the consent decree have as its goal quality education which includes integration of the races where practical and feasible.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the requests of the original plaintiffs and all other intervening plaintiffs who have requested the Court to allow them attorneys' fees and costs be and the same are denied. No attorneys' fees are allowed and each party shall bear its own costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request of intervening plaintiffs Adams, et al., to declare unconstitutional the policies of the Department of Housing, Education and Welfare (HEW) concerning the magnet school program is

denied for the reason that the question is moot.

Dated this 12th day of April, 1979.

/s/ James H. Meredith
United States District Judge

FOOTNOTES

1. Plaintiff Minnie Liddell attested that on February 12, 1972, she had written, on behalf of the Concerned Parents of North St. Louis, to the president of the St. Louis Chapter of the NAACP soliciting its support and aid in this lawsuit, and that "We were turned down cold." In addition, plaintiff Barbara Goldsby attested that she was a member of the committee which met with officials of the NAACP on February 25, 1972, to ask for its aid in this desegregation suit, and that the officials of the NAACP had refused to help plaintiffs and had said, "That the schools were integrated and that they (NAACP) had a good working relationship with the Board."

2. Plaintiff-intervenors United States Department of Justice and Caldwell, et al., (NAACP), together with the original plaintiffs, Liddell, et al., are referred to throughout this opinion, except where noted, as plaintiffs.

3. The group of parties plaintiff consisting of Adams, et al., Puleo, et al., and the City of St. Louis contest the validity of the consent decree. They will be referred to as plaintiffs for a discussion of that section only.

4. The transition from the dual system to a unitary one was done by steps so that all details, such as boundary revision, transfers of books and materials, etc., could be done properly. An advantage to the transition by steps was better supervision in that more attention could be devoted to the particular schools being integrated at that time.

5. Since race was no longer a factor in determining eligibility to enroll in any St. Louis public school, any reference to race was excluded from the records of the school system.

6. In the introduction to "Civil Rights U.S.A.", 1962, a Report to the Civil Rights Commission, it was noted: "[A]lthough the St. Louis public school system was organized on a racially segregated basis in 1954, it desegregated all its schools completely in the school years of 1954-55 and 1955-56."

7. The Desegregation Report of September, 1956, prepared by Mr. Scott, noted that the above figures should be adjusted upward since ". . . a somewhat larger number of white and Negro pupils enrolled in the same schools than was initially estimated." Exactly what that number was is not known as school records were no longer kept by race.

8. The term "net out-migration" is defined as the difference between the number of persons moving into a given area and the number of persons moving out of that area, less natural increase, in a given period of time.

9. HEW had defined "attendance area" as:

> ". . . in relation to a particular school, the geographic area in which the children who are normally served by that school reside."

45 C.F.R. §116.1(b) (1974).

10. More recent regulations do not attempt to liberalize these requirements.

11. There is one limited exception which was approved in November, 1978. Students transferred in midyear would continue to remain eligible for the remainder of that year. 20 U.S.C. §2733 (1978), P.L. 95-561.

12. In 1978-79, Stix and Waring are both magnet schools with 70.0% and 91.9% black students respectively.

13. Waring, now a magnet school, has 91.9% black student enrollment in 1978-79.

14. Before desegregation beginning in 1954, the St. Louis school system had already begun to lose white students. Until 1967-68, the system lost white students and gained in black students. After 1968, the system lost both black and white students. The percentage gains in black students has consistently risen since desegregation.

15. This tabulation does not reflect the racial composition as of 1972-73 and 1975-76 of the technical high school O'Fallon, which is a specialized high school with a wholly integrated student body. The reason is that they were in attendance at that school only for a half day and they were counted in the racial count of the respective academic high school where they attended for the other half day. Hence there was at least a half day of integration for the students of those high schools which is not reflected in the preceding tabulation. The above figures also do not reflect Harris Teacher's College enrollment.

16. The Department and the NAACP list 25 schools as vestiges. Six of these schools have been closed.

17. All of the 20 schools (except Banden) which before Brown were all white and are located west of Grand and north of Lindell are now over 99% black. Of the 19 schools which were all black before Brown, 11 are located in the area west of Grand and north of Lindell. Of the remaining eight pre-Brown black schools, seven are located north of Lindell but east of Grand. Of the 10 pre-Brown white schools in this area, eight are now between 87% and 100% black. Of the other two schools, one is a magnet school. The other represents the only exception.

18. The 1962 Report to the Civil Rights Commission criticizes the Board for adhering to the neighborhood school where resegregation was taking place. This study recommended a liberalization of the policy to enhance integration.

19. It should be noted that this opposition to bussing, done to relieve overcrowding, comes seven years after the termination of intact bussing.

20. Creating larger units in areas of dense black population, thereby requiring larger schools which would be largely black, has been criticized in other school desegregation cases.

21. Policies of the United States government with respect to the allocation and use of Title I funds have in the past confirmed and reinforced the neighborhood school policy. See further discussion of Title I, supra.

22. This policy was in effect before desegregation to allow any student to complete attendance at his school without regard to a change in residence by that student.

23. Plaintiffs have pointed several times to the failure of the Board to adopt recommendations of the CAC. Failure to adopt certain recommendations of the CAC is not evidence of segregative intent. Complaints have also been aired by plaintiffs when the Board did adopt recommendations of the CAC. (The Department charges that adoption of the permissive transfer recommendation had a clearly foreseeable segregative impact.) Adoption of CAC recommendations is also not evidence of segregative intent.

24. The 1962 Report to the Civil Rights Commission noted that it is not easy to detect a transferee's motives in an application for a curriculum transfer. The solution suggested by the report, to standardize high school curriculum, was met in this instance by the Board when the abuse was detected.

25. The Board did not adopt a formal position on abuses of medical transfers even though there existed a formal policy to prevent abuses in athletic transfers. The reason for the difference is that the restrictions on athletic transfers were placed by the High School League and not by the Board. Further, the handling of athletic restrictions is not similar or pertinent to preventing students from giving misrepresentations on transfer applications.

26. The expert witness for the NAACP, Dr. Michael Stolee, testified that in pre-

paring the desegregation plan submitted by the NAACP, boundary changes played a very minor role.

27. The move was necessary to keep Harris' accreditation. Harris was converted to Enright middle school which opened virtually all black.

28. The need for administrative convenience must not be taken lightly in a pre-computer age.

29. Plaintiffs charge that while black students from north St. Louis were being bussed intact, 50 white students from the Christian Home Orphanage were being bussed and received into the regular classrooms. These students were too few in number to be transported as whole classes, there being only 50 students in various grades. Plaintiffs also charge that the transportation of these 50 pupils violated the neighborhood school policy in that Benton, a majority black elementary school, was the neighborhood school for the Orphanage. This alleged departure from this policy was an exercise by the orphans to continue in the same school before the redistricting in 1954-55. Benton was also extremely overcrowded at the time in question. Bussing of these institution children is much easier than bussing children from individual homes. Attendance by the orphans in schools other than Benton until 1964 was allowed for good cause shown to the Board by the Orphanage. When the Board terminated bussing these children, they withdrew from the public school system. It is thus apparent that bussing these children had no impact on the racial composition of Benton.

30. The charge as to the Froebel elementary school is unfounded. In that situation the enrollment projection at Froebel (100% white) indicated overcrowding and students were scheduled to be bussed to the Madison elementary school (63.2% black). Bussing was ordered to end a few weeks into the school year when actual enrollment showed no overcrowding.

31. The Department lists as an example of segregative black-to-black transportation that the Board took no action to modify the transportation out of the Yeatman elementary school (99.8% black) as requested by the Concerned Parents of North St. Louis. (Yeatman is one of the schools which plaintiff charges should not have been built in this area. Now the issue is what to do with overcrowding at that school.) The evidence shows that the Board previously considered and investigated plaintiff's suggestions and found that bussing to Bates elementary school (100% black) was the only viable solution. The Department has set forth no other solution either. The charge is inconclusive.

32. The Department, in support of its charge that "reasonable ratios" limited the number of black transportees to southside schools, points to the alteration of some classroom assignments at the Buder elementary school in 1965 in accordance with the ratio "policy." The changes, which were minimal, did not affect the number of black students attending that school.

33. The impact of the Title I program is discussed more fully, supra.

34. The Department and the NAACP suggest that because of contact with housing

authorities and commissions the Board exerted influence over them in furthering segregative housing. There is no shred of evidence to support this contention. The desire of the Board to know where people, thus students, regardless of race, were going to be located so that proper projections could be made for facilities is not evidence of influence over housing authorities or of segregative intent.

35. The Department charges that the Board refused to end intact bussing in 1963-64 until black students could be relocated in the new segregated schools. The Board planned the extensive school construction in 1960 before any complaints about intact bussing were aired.

36. Black wards consistently voted for school bonds in higher percentages than did other wards.

Mrs. Liddell's statement in 1971 about the neighborhood schools being a key factor in stabilizing north St. Louis neighborhoods dispels the unsupported charge of the Department that school construction had a disruptive effect on the neighborhoods in north St. Louis.

37. The plaintiffs' proposition that overcrowding be relieved in the 1960's and 1970's by bussing rather than by construction is not supported by any factual analysis or figures to support the feasibility of any such program. A decision not to bus thousands of children is perfectly reasonable and is not evidence of segregative intent.

38. Plaintiffs contest that many people did not support the Board's construction policy. Plaintiffs (Department) refer

several times to minutes of Board meetings where various Board members expressed concern over building new schools. Some dissent and expression of various views is to be expected from any democratic group. Examination of various aspects of a policy must be reviewed before decisions are made. It must be noted that members expressing concern saw that the new schools were needed and voted for them along with black members of the Board.

The Community Resources Report of March 3, 1964, relied on by the Department and the NAACP to show disapproval of the new construction and to show that the Board rejected integrative alternatives presented to them, is inapplicable. The Report does not wholly disapprove of the Board's construction, but rather objects to the construction of supplementary units at five locations. The report does not allege any segregative intent or effect. The report was presented to the Board's continuing Committee on Integration on March 5, 1964, after the Board had already signed contracts for these units and work had already started.

39. The charge that the sites selected by the Board locked black students into segregative schools is not supported by the evidence. Blacks continued to be highly mobile, moving from one area of the City to another. As a result, some schools, such as those in the central area, have major vacancies and some are no longer used as regular elementary schools, notwithstanding the fact that they were originally placed there to relieve overcrowding.

40. The Department complains about the site selected for Northwest high

school, suggesting instead a site that was in an area which the Department described as having the highest percentage of black residents in the Northwest attendance zone. It is estimated that this site would have opened heavily black. Northwest, at the site selected by the Board, opened with a white majority and was able to sustain for many years a good racial mix before becoming virtually all black.

41. The NAACP and the Department charge that the Board built five schools in 1967-68 with Title I funds in areas of high black concentration with the result of isolating black children in segregated schools. These schools were placed in areas where overcrowding was the most severe. In addition, in order to qualify for funds, the schools had to be built in poverty areas, which happen to be black in St. Louis.

The NAACP and the Department further charge that by building these schools, the Board contravened the federal regulation which forbids spending funds which would result in "cultural" or "linguistic" isolation. 45 C.F.R. §116.21(f). The NAACP states that this regulation was in effect in 1967 when the building program was taking place. The regulation was not in effect at that time, but rather was enacted in late 1968, after the building program was finished. The Board, therefore, could not have violated this regulation. The evidence shows that the Board in good faith followed HEW Regulations, which had the effect of increasing, rather than reducting racial isolation in the St. Louis schools. The Title I program is discussed in more detail, supra.

42. The Department alleges as an example of segregative assignment in noncontig-

uous schools, the closing of Carr elementary school and reassignment to noncontiguous Franklin elementary school. Franklin and Carr, however, are contiguous.

43. This discussion does not include the Board's operation of the magnet schools under the consent decree. Magnet schools are discussed, infra.

44. Data on the racial composition in special elementary and high schools for 1975-76 and 1978-79 is contained in Appendix A(2) and (3).

45. The problems which induce enrollment in these special classes are beyond the control of the Board.

46. The fact that there are more black than white students assigned to classes for the mentally retarded is (contrary to the charge of the NAACP) beyond the control of the Board.

47. The 1962 Report to the Civil Rights Commission states: "There is not a shred of evidence that ability group has been used in St. Louis with segregative intent centered on race." (p. 289.) The report continues: "gifted children in St. Louis not only get a suitably challenging academic offering but a highly favorable racial consolidation as well." (p. 290.) Nothing in the record subsequent to 1962 indicates that the Board discriminated in administering the special programs.

48. The 1956 technical high school boundaries are charged to be discriminatory by the NAACP and the Department. The Hadley boundaries were allegedly drawn to serve only black students. The evidence shows that the Hadley district included attendance zones of many schools which were

all white before 1954 and which retained a white majority in 1962-63. The Hadley boundaries also encompassed the entire Central high school district which was 9.2% black in 1962-63.

49. With all courses being open to both black and white students throughout St. Louis, a factor in the late 1950's and early 1960's which limited black enrollment in classes taught at O'Fallon was the exclusion of blacks from certain labor unions. Because of this, few blacks were able to enter the apprenticeship training program. The Board worked to increase membership in the apprenticeship program. Their efforts were eventually successful.

50. A program called "Operation Steno" was suggested to the Board by a black assistant district superintendent. This program was designed as a rememdial program to help black students gain jobs as secretaries and stenographers. Objections were raised to the program as being segregative and the project was abandoned.

51. The purpose of this policy was to provide stability in the schools during the changeover phase of large numbers of students. The interpretation by plaintiffs that this policy froze teacher assignments into segregated faculties and that transfers of teachers were discouraged is erroneous. In 1954-55, 25 black teachers were assigned to teach in six previously all white high schools which became integrated. These transfers affected 14% of the black high school teachers. With regard to the elementary schools, two-thirds of the enrollment were attending interracial schools and a number of black teachers were transferred to these schools.

52. In Hazelwood School District v. United States, 433 U.S. 299, 303, 310-12 (1977), the Supreme Court took favorable notice of the efforts of the St. Louis Board to recruit and maintain a 50 percent black teaching staff (referring to the 1970 school year).

53. Counsel for the Board in the 1960's wrote a 13 page legal memorandum which advised that compulsory transfers were not required under the reported decisions then in effect and that they would probably be in violation of the Fourteenth Amendment.

54. There is no evidence that any racially imbalanced distribution of teachers resulted in inferior teaching of black students. An examination in 1962 in a Report to the Civil Rights Commission of teacher qualifications, operating costs per pupil, and pupil-teacher ratios revealed that black students as a class did not suffer from comparatively inferior instructional standards.

55. Parochial schools in north St. Louis retained white faculties as the student population in those schools, as well as in the public schools, became black.

56. See also Raney v. Board of Education, 391 U.S. 443 (1968).

57. The suggestion that "schools which have a majority of Negro students are not "desegregated"," whatever the racial makeup of the school district's population and however neutrally the district lines have been drawn and administered, finds no support in our prior cases." Milliken I, supra, 418 U.S. at 747, n.22.

58. Although Davis is a race discrimination in employment case, the Court directly addresses school desegregation issues.

59. Wright vs. Council of City of Emporia, 407 U.S. 451 (1972), indicates that in proper circumstances, the racial impact of a law, rather than its discriminatory purpose, is the critical factor. In that case a constitutional violation had already been determined and thus there was no need to find an independent constitutional violation.

60. The determination of a constitutional violation was made in United States v. School District of Omaha, 521 F.2d 530 (8th Cir.), cert. denied, 423 U.S. 946 (1975). That decision employed a legal presumption to shift the burden to the school authorities to establish that segregative intent was not among the factors that motivated their actions. The presumption used arises "once it is established that school authorities have engaged in acts or omissions, the natural, probable and foreseeable consequence of which is to bring about or maintain segregation." Id. at 535-36. Since the record on appeal did not rebut this presumption, the Court of Appeals for the Eighth Circuit remanded for the formulation of a system-wide remedy.

61. The Court also vacated the decision in Amos v. Board of School Directors, 408 F. Supp. 765 (E.D. Wis.), aff'd, sub nom. Brennan v. Armstrong, 539 F.2d 625 (7th Cir. 1976), cert. granted, vacated, and remanded, 433 U.S. 672 (1977).

62. Columbus Board of Education v. Penick, 583 F.2d 787 (6th Cir. 1978), ap-

plication for stay of execution granted, 99 S. Ct. 24 (Aug. 11, 1978), cert. granted 47 U.S.L.W. 3451 (Jan. 9, 1979). Other questions presented by this case include the proper application of incremental segregative effect and the extent that segregative intent may be inferred by adherence to a neighborhood school policy where the foreseeable effect of the assignment policy is to follow segregated housing patterns, thus resulting in some racially imbalanced schools. Also under review is the remand ruling in Dayton Board of Education v. Brinkman (Brinkman IV), 583 F.2d 243 (6th Cir. 1978), cert. granted, 47 U.S.L.W. 3451 (Jan. 9, 1979).

63. "The Congress declares it to be the policy of the United States that . . . . (2) the neighborhood is the appropriate basis for determining public school assignments." Equal Educational Opportunities Act of 1974, 20 U.S.C. §1701 et. seq.

64. In Austin Independent School District v. United States, 429 U.S. 990 (1976), the Supreme Court granted certiorari and vacated the decision of the Fifth Circuit and remanded the case for reconsideration in light of Washington v. Davis, 426 U.S. 229 (1976). The decision which was vacated held that:

> "school authorities may not constitutionally use a neighborhood assignment policy that creates segregated schools in a district with ethnically segregated residential patterns. A segregated school system is the foreseeable and inevitable result of such an

assignment policy. When this policy is used, we may infer that the school authorities have acted with segregative intent. 532 F.2d 380, 392, (CA 5 1976)." Austin, supra, 429 U.S. at 991-92, n.1.

Justice Powell, in a concurring opinion to the granting of certiorari, stated that in this holding:

"As suggested by this Court's remand premised upon Washington v. Davis, supra, the Court of Appeals may have erred by a readiness to impute to school officials a segregative intent far more pervasive than the evidence justified."

Austin, supra, 429 U.S. at 991.

APPENDIX 7

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JANICE ADAMS, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA, et al.,

Appellees.

Opinion of the Court by CHIEF JUDGE LAY, JUDGE HEANEY, JUDGE BRIGHT, JUDGE ROSS, JUDGE STEPHENSON, JUDGE HENLEY and JUDGE McMILLIAN.

Prior to 1865, Missouri prohibited the creation or maintenance of schools for teaching black children to read or write. In 1865, the state legislature passed laws requiring that separate schools be established for black students. The substance of this legislation was incorporated in the Missouri Constitution of 1945, Separate schools were maintained by the St. Louis Board of Education pursuant to the legislation and the state constitution.

Ninety years after Missouri first required separate schools, the United States Supreme Court, in the Brown v. Board of Education decisions, found that segregated school systems were providing an inferior education to black children. It held that such systems must be disestablished with all deliberate speed. As a result of these decisions, the Missouri law requiring separate schools were repealed or declared inoperative. The St. Louis Board of Education's response to Brown was to adopt a

"neighborhood school plan." Now, twenty-six years later, St. Louis elementary and secondary schools remain segregated.

The St. Louis Board of Education failed to take effective measures to desegregate the school system in the years immediately following Brown I and has subsequently enforced policies with respect to the assignment of students, the transportation of students, the assignment of personnel and the construction of school facilities which cannot be reasonably explained without reference to racial concerns and which have contributed substantially to continuing segregation in the school system. This failure resulted in the commencement of this action in 1972.

Since 1972, the Board of Education has taken some steps to disestablish the dual system. These include the adoption of an incremental faculty desegregation plan the opening of several specialized and magnet schools, some of which are integrated.

In our judgment, these steps, while meaningful, are not adequate to disestablish the existing segregated school system. Something more is clearly required. We thus have no alternative but to again remand this matter to the district court with directions to require the Board of Education, in consultation with the parties, a qualified expert and an interracial committee selected by the district court from all elements of the community, to develop and implement a plan that will integrate the St. Louis Public schools.

I. HISTORICAL BACKGROUND

Prior to the Civil War, a Missouri

statute provided: "No person shall keep or teach any school for the instruction of negroes or mulattoes, in reading or writing, in this State." Act of February 16, 1847, Section 1, 1847 Mo. Laws 103. Beginning in 1865, the Missouri General Assembly enacted a series of statutes requiring separate public schools for blacks. See, e.g., Act of February 17, 1865, Section 13, 1865 Mo. Laws 170; Act of June 11, 1889, Section 7051a, 1889 Mo. Laws 226. This segregated system was incorporated into the Missouri Constitution of 1945, which specifically provided that separate schools were to be maintained for "white and colored children." See Mo. Const. art. IX, Section 1(a)(1945). Although a 1954 Attorney General opinion declared this provision unenforceable following Brown I, it remained a part of the state constitution until repealed in 1976. Satutes implementing the constitutionally mandated segregation provided for separate funding, separate enumerations, separate consolidated "colored" school districts, and the interdistrict transfer of black students. Most of these statutes were not repealed until 1957. See Act of July 6, 1957, Section 1, 1957 Mo. Laws 452.

In the 1953-1954 school year, the St. Louis school district operated seven white and two black high schools, approximately eighty-three white and forty black elementary schools, and one white and one black vocational/technical school. There were 58,595 white (65.5%) and 30,880 black (34.5%) elementary and high school students attending school in the district.

Under the state-mandated segregated system, white students were generally assigned to schools in their neighborhoods. Black students attended black schools in

the "core" of the city. Those black students residing outside the "core" were bused into the black schools; for them there were no neighborhood schools.[1] Separate overlapping attendance zones were maintained for black and white students. Black students from some suburban St. Louis County school districts were also bused into the City's black schools because state law and practice prohibited them from attending their local schools. The black schools were staffed by black teachers, administrators and nonprofessionals; the white schools by white personnel.

After Brown, the St. Louis Board of Education declared that it would implement a plan designed to desegregate its system. The heart of that plan was said to be the "neighborhood school concept."[2] School attendance zones were redrawn and students were generally assigned to schools close to their homes. The zones were nearly identical with the boundaries of racially identifiable neighborhoods.[3] Moreover, a "continuation transfer" option was made available to all students then enrolled, permitting them to remain in the school in which they were then enrolled until graduation, unless overcrowding would result.

The new plan did not change the segregated nature of the St. Louis school system. As detailed in Part IV of this opinion, schools that had all-black student and faculty populations prior to Brown continued to be all black or virtually all black after the 1955 plan went into effect. Most pre-Brown white schools also retained their racial identity. Those pre-Brown white schools located in the black neighborhoods, however, turned virtually all black immediately after the plan was implemented.

II. PROCEDURAL HISTORY

On February 18, 1972, Craton Liddell, his mother, and other members of the Concerned Parents of North St. Louis and their children filed this action in the United States District Court for the Eastern District of Missouri seeking to represent the class of black school children in the St. Louis school system. They alleged that the Board of Education and its administrators had "effected and perpetuated racial segregation and discrimination" in the operation of the public schools of the City of St. Louis, in violation of the Fourteenth Amendment.

For more than a year, the parties engaged in discovery proceedings. On October 3, 1973, a class was certified and, by public notice, other interested parties were invited to intervene on or before December 1, 1973. No one accepted the invitation. The defendant Board of Education's motion to join as additional parties defendant the Governor, the State Attorney General, the Commissioner of Education of the State of Missouri, the State Board of Education, the St. Louis County Superintendent of Education, and the twenty school districts in St. Louis County that constitute the first two tiers of districts adjoining the City of St. Louis was also denied without comment by the district court on December 1, 1973.

Early in 1974, the district court requested that the parties stipulate as to the undisputed facts. The stipulations were filed on June 7, 1974. Following a year and half of negotiations, the Liddell group and the Board of Education agreed to

a consent decree which was approved by the court on December 24, 1975.[4] The court ordered publication of the judgment and advised that any objections thereto, either by members of the class or by other interested parties, should be filed by January 16, 1976. On that date, objections to the decree were filed by organizations representing St. Louis teachers and by a second group of black parents (Caldwell, et al.), who were joined by the St. Louis Chapter of the NAACP. The Caldwell group moved to intervene.

At a hearing, Liddell and the Board of Education defended the consent decree and opposed the motion for intervention. The district court overruled the objections and denied the Caldwell group's motion to intervene on the grounds that the motion was untimely and that the class was adequately represented. The Caldwell group appealed the district court's denial of its motion to intervene. This Court reversed on December 13, 1976, Liddell vs. Caldwell, 546 F.2d 768 (8th Cir. 1976). On appeal, we first considered the argument that the Caldwell motion was untimely. The Caldwell group's position was that intervention was appropriate because the group was primarily interested in the remedial issue, an issue that had not yet been fully or adequately resolved. Noting that, "as all agree, [the consent decree did] not constitute the overall plan for desegregation," but represented "only partial steps toward implementing a unitary system," id. at 771, this Court held that intervention for the purpose of litigating the remedial issue was timely.

We turned next to the issue of the adequacy of the class representation. The Caldwell group argued that the plaintiffs had abandoned the original goal of the litigation when they entered into the consent decree. In particular, Caldwell attacked the decree for its failure to require desegregation of the elementary schools and for offering only marginal opportunity for desegregation in grades seven through twelve. Caldwell complained, in essence, that the consent decree ignored the need for meaningful integration. We observed that "if the overall plan to be submitted by the board [in compliance with the consent decree] contains major deficiencies in the respects asserted, the plan will encounter serious constitutional objection. Id. at 733.

Since serious questions had been raised concerning the adequacy of the consent decree and because remedial planning was to be an ongoing process, we directed the district court to immediately grant the Caldwell group's petition for intervention. Further, in light of the difficulties of achieving a successful remedy, we suggested that the district court invite the United States Department of Justice and the Missouri State Board of Education to intervene, that a biracial citizens committee be created to aid in the planning of a remedy, and that a voluntary interdistrict solution be investigated. We further directed the district court to hear objections to the Board's forthcoming desegregation plan and to consider any alternative plans submitted by other parties. Finally, we directed that "[i]n no event should implementation of plans for a unitary school system be delayed beyond the

commencement of the 1977-78 school term." Id. at 774. The Board of Education promptly filed a petition for certiorari with the United States Supreme Court.

On February 25, 1977, the district court granted the Caldwell group leave to intervene.

On February 28 and March 10, 1977, the Board of Education submitted a plan for reducing racial segregation in the City's secondary schools. Thereafter, the parties filed their objections to the plan and, in April of 1977, the district court held a hearing. Finding that the only portion of the Board of Education's plan on which there was agreement was that relating to magnet schools, the court ordered the Board to proceed with the implementation of that part of the plan for the school year beginning in September of 1977. The court withheld action on any other aspect of the plan and scheduled further hearings on the plan and its alternatives for July 25, 1977.

Later that spring and summer, Liddell, the Caldwell group and the United States Department of Justice (as amicus curiae) submitted alternative plans for the desegregation of the school system. In May, the Caldwell group moved to enforce its plan by injunction.

On June 27, 1977, the Supreme Court denied the Board's petition for certiorari. St. Louis Board of Education v. Caldwell, et al., 433 U.S. 914 (1977). On July 13, 1977, the district court decided, on its own motion, that it was now necessary to

determine whether there had been any constitutional violation that would support the imposition of a remedy. The court stated: "This determination has never been made by the consent decree nor the stipulation of facts, and the stipulation of facts denies any constitutional violation by defendants. * * * The remedy to be adopted by the court will depend on the nature and extent of the constitutional violation, if any." Craton Liddell, et al., and Earline Caldwell, a Minor, et al. v. The Board of Education of the City of St. Louis, Missouri, et al., No. 72 C 100(1), slip op. at 2 (E.D. Mo. July 13, 1977).

By various orders during the summer of 1977, the United States, The City of St. Louis, Janice Adams, et al. (representing the Concerned Parents for Neighborhood Schools) and Mary Puleo, et al. (representing the Involved Citizens Committee) were allowed to intervene as plaintiffs. The State of Missouri, the Commissioner of Education of the State of Missouri and the State of Missouri Board of Education were added as parties defendant.

With the understanding that both liability and remedy were at issue, the case proceeded to trial.[5] The eight parties aligned themselves into two principal groups. One group, Liddell, the Caldwell group and the Department of Justice, took the position that the Board of Education had violated the United States Constitution by its operation of the public schools. Each then argued the merits of its own remedial alternative. The second group, the Board of Education, the State of Missouri, the City of St. Louis and Adams, denied that any constitutional violation had oc-

curred.[6] The Board of Education argued that it had never acted with an intent to segregate and that it was not responsible for any racial segregation found to exist. It agreed, nonetheless, to implement its desegregation plan developed pursuant to the consent decree. The State argued that there had been no violation but that, in any event, it was not responsible and should not be made to participate in any remedy. Puleo did not participate in the trial.

On April 12, 1979, the district court handed down its decision. Liddell v. Board of Ed., City of St. Louis, Etc., 469 F.Supp. 1304 (E.D. Mo. 1979). It found no constitutional violation by the defendants. It concluded that the St. Louis Board of Education had fulfilled its obligation to create a unitary school system in 1955 and 1956 by the adoption of "a neighborhood school policy." It held that the resegregation of the system had resulted from demographic shifts influenced by the policies of the federal government and others, not by the acts or omissions of the Board of Education. Nevertheless, the district court held that the Board of Education was bound by the consent decree. As a guide to continued planning under that decree, the court instructed that

> [s]ince no constitutional violation has been found, the criteria shall be quality education, which includes integration of the races, where practical and feasible.

Id. at 1365.

III. ISSUES ON APPEAL

The principal issues on appeal are: (1) whether the Board effectively desegregated the school system in 1954-1956 by adopting and implementing its neighborhood school plan; (2) whether Board policies or actions since that date have contributed to the present segregated condition of the school system; (3) what policies and actions must now be taken to integrate the St. Louis elementary and secondary schools; and (4) whether certain appellants should be awarded attorney fees.[7]

IV. EFFECTIVENESS OF THE 1954-1956 BOARD PLAN

The record in the present case clearly establishes that the St. Louis Board of Education's 1954-1956 "neighborhood school plan"[8] had very little, if any, effect on the existing dual school system in the City. The new plan resulted in most of the student population continuing to attend one-race or virtually one-race schools. Although there are few exact figures for the period immediately following implementation of the plan because the Board of Education kept no records of school racial composition from 1955 to 1962, all the available data demonstrates that little desegregation actually occurred in 1954-1956.

A 1956 Board of Education report cited 1955 projections indicating that over one-half of the white elementary schools (46 of 83) would have an all-white student population and two-thirds of the black elementary schools (27 of 40) would remain all black immediately following the plan's implementation. The remaining thirteen formerly

all-black elementary schools were also projected to remain segregated, with student populations ranging from 82% to 99% black at a time when blacks comprised approximately 35% of the public school population. Cf. Columbus Board of Education v. Penick, _____U.S. _____, 61 L.Ed2d 666, 673 (1979).

The situation was similar in the high schools. A 1962 staff report to the United States Civil Rights Commission stated that the two formerly black high schools, Sumner and Vashon, enrolling more than 3,400 students, remained all black after the plan was implemented. The 1955-1956 populations of the seven formerly white high schools were reported to be as follows:

	NO. WHITE	NO. BLACK	% BLACK
Southwest	1,583[9]	0	0 %
Cleveland	1,476	7	0.4%
Roosevelt	1,791	29	1.5%
Beaumont	1,792	98	5 %
McKinley	1,437	211	13 %
Central	1,034	167	14 %
Soldan	1,000	350	26 %
	10,083	862	7.9%

In 1962, the Board of Education again began to keep complete records on the racial composition of schools in the district. Those records corroborate earlier evidence of the segregative effects of the School Board's plan. In that year, all twenty-eight of the formerly black elementary schools still in existence were all or vir-

tually all black; thirty-six other elementary schools were over 90% black. Eighty-one percent of the black students attended schools that were 90% or more black. Similarly, fifty of the formerly white schools remained 85% or more white in 1962 and two-thirds of the white students attended schools that were 90% or more white. The 1962 figures also show that the overall school population and the black percentage of that population had increased since 1954. The 1962-1963 total enrollment was 108,245--55.4% black and 44.6% white.

These segregated patterns in student assignments were mirrored in the faculty assignments. Of the twenty-eight pre-Brown black schools still in existence in 1962, twenty-six had faculties that were 100% black. The other two were Sumner High School (98.7% black) and Henry elementary (82.8% black). Moreover, those formerly white schools that had changed student racial identity between 1954 and 1962 tended to change faculty racial identity as well.

By the start of the 1979-1980 school year, the district enrollment had decreased to 66,011, while the district-wide percentage of black students had increased to 75.5%. Eighty-two percent of the black students still attend schools that are 90% or more black. Of the 119 regular elementary and secondary schools currently operating in the district, seventy-eight (65.5%) are currently 90% or more black, fourteen (11.7%) are 90% or more white. Thus, 77.3% of the regular schools in the City are now essentially one-race schools.[10]

The defendants do not dispute over the segregated nature of the St. Louis school

system. Instead, they argue that current segregation "is not the result of present or past discriminatory action on their part." See Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1, 26 (1971). Specifically, defendants assert that they disestablished the dual school system, as required by Brown, when they instituted the "neighborhood school policy"[11] in 1954-1956. The district court agreed with this contention. A careful review of the record and the controlling law, however, convinces us that the district court was clearly in error as to the constitutional requirements imposed on defendants who have formerly discriminated pursuant to state law. It also erred in its evaluation of the extent to which the defendants have met those requirements.

The district court erroneously held that the establishment of a neighborhood attendance policy fulfilled the defendants' "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." See Green v. School Board of New Kent County, 391 U.S. 430, 437-438 (1968). Neighborhood school policies have been the subject of Supreme Court attention on numerous occasions. The Court has consistently held that merely establishing a racially neutral school assignment system is not sufficient to eliminate the constitutional violation caused by past intentional discrimination. In Swann, the court stated,

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to

> schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. * * *
>
> * * * "Racially neutral" assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. * * * In short, an assignment plan is not acceptable simply because it appears to be neutral.

Swann v. Charlotte-Mecklenburg Bd. of Ed., supra at 28; see Keyes v. School District No. 1, 413 U.S. 189 (1973);[12] Clark v. Board of Education of Little Rock School Dist., 426 F.2d 1035 (8th Cir. 1970)(en banc), cert. denied, 402 U.S. 952 (1971). In Davis v. Board of School Commrs., 402 U.S. 33, 37 (1971), the Court expressly stated that neighborhood zoning is not "per se adequate to meet the remedial responsibilities of local boards." See also Arnulfo M. Diaz, et al. v. San Jose Unified School District, et al., No. 76-2148, slip op. at 582 (9th Cir., Nov. 5, 1979)("The existence of such a [neighborhood] policy is not enough to prove the absence of segregative intent."). Indeed, the Court has gone so far as to question whether a racially neutral policy would ever be adequate to meet a school board's affirmative duty to disestablish a dual school system: "In this remedial process, steps will almost invariably require that students be

assigned 'differently because of their race.' * * * Any other approach would freeze the status quo that is the very target of all desegregation processes." McDaniel v. Barresi, 402 U.S. 39, 41 (1971).[13]

The record shows that the Board's 1954-1956 plan perpetuated the segregated school system. One School Board document discloses that the results of the 1954-1956 plan was implemented, the school attendance zones were drawn so as to "relocate the smallest possible number of pupils." Similarly, the post-Brown policy adopted by the School Board was designed to have the least possible impact on the segregated personnel assignments. The policy provided: "Whenever possible, both teaching and non-teaching employees will retain their present assignments." Preservation of the status quo, obviously meant preservation of a segregated system.

Aside from direct statements of intent, there is an abundance of evidence from which segregative intent can be inferred. According to one of the most recent Supreme Court pronouncements on the question, one factor tending to indicate the existence of segregative intent is a school board's "[a]dherence to a particular policy or practice, with full knowledge of the predictable effects of such adherence upon racial imbalance in a school system." Columbus Board of Education v. Penick, supra at 681. The immediate effects of the St. Louis School Board's 1954-1956 plan were plainly foreseeable by the Board and school administrators. As is graphically portrayed in Appendix II, the 1955-1956 high school attendance zones were drawn so as to cor-

respond, with remarkable consistency, to the racially identifiable residential neighborhoods in the city. Elementary school boundary lines were drawn in a similar fashion. The result was inevitable and unquestionably foreseeable: As detailed earlier, the black schools remained predominantly black and the white schools remained predominately white, with very few exceptions.[14]

Further evidence of the Board's intent to maintain a segregated school system is the "continuation transfer" policy that was a part of the 1954-1956 plan.[15] The policy provided:

> Students already enrolled in a school, but not resident in its new district may, but are not required, to continue at that school until they graduate. This privilege will be granted, however, only if the particular school is not overcrowded.

The unmistakable intent and effect of this policy was to preserve the pre-Brown system of school assignments.[16] Like the "freedom-of-choice plan" disapproved by the Supreme Court in Green v. School Board of New Kent County, supra, the continuation transfer option virtually guaranteed that the School Board plan would be an ineffective tool of desegregation. See id. at 440.

The foregoing demonstrates that the School Board's 1954-1956 plan did not meet the defendants' constitutional duty to disestablish the dual school system in the City of St. Louis. The Supreme Court's conclusion in Columbus is applicable to St. Louis as well: "Whatever the Board's current pur-

pose with respect to racially separate education might be, it knowingly continued its failure to eliminate the consequences of its past intentionally segregative policies. The Board 'never actively set out to dismantle this dual system.'" Columbus Board of Education v. Penick, supra at 679,[17] quoting the district court's opinion in that case, 429 F.Supp. at 260.

V. POST-1956 SEGREGATIVE ACTS

The dual school system in St. Louis, legally mandated before 1954 and perpetuated by the Board of Education's 1954-1956 desegregation plan, has been maintained and strengthened by the actions of the Board in the years since. The Board's steadfast adherence to a student assignment policy which did not desegregate the schools and its use of intact busing, school site selection, block busing, permissive transfers, and faculty assignments have preserved segregation in the school system.

1. Student Assignment Policies

Perhaps the most significant segregative policy of the St. Louis Board of Education in the years since 1956 has been its adherence to the neighborhood school student assignment policy. Despite the Board's "continuing 'affirmative duty to disestablish the dual school system,'" Columbus Board of Education v. Penick, supra at 678, quoting McDaniel v. Barresi, supra at 41, the Board has continued a policy that, in 1979, still sends black students to black schools and white students to white schools.[18] This basically segregative policy, moreover, has been enhanced by successive and consistent

Board action.

The first of these successive actions was the use of intact busing. "Intact busing" is a technique that daily sends an entire class of students, with their teacher, from an overcrowded school to a vacant classroom elsewhere. The technique was used to combat overcrowding in the pre-Brown era with white students being bused to white schools and black students to black schools. Because the 1954-1956 redistricting temporarily reduced overcrowding, intact busing was used sparingly from 1955 to 1957. In 1959, however, intact busing again became significant and over 1,000 students were so bused. This number grew to more than 6,000 by 1963. The bused students were treated administratively as part of the school from which they came rather than the school to which they were sent. Consequently, they often arrived, recessed, ate lunch and departed on different schedules than the other students in the receiving school. They thus became an isolated subset of the school in which they were housed. Significantly, in the post-Brown era most of the students affected by this policy were black students sent to white schools.[19]

In 1962, a group of black parents complained about this policy to the Board of Education. Suit and countersuit were filed over the constitutionality of intact busing. These suits were dropped, however, when the opening of new schools and the Board's modification of its policy defused the issue.[20] By 1964, intact busing had ceased.

Segregation in student assignment, however, continued. All ten of the new

schools that opened in 1964 (thereby reducing the need for intact busing) were between 98.5% and 100% black at the time of opening. This reflects a durable pattern of segregative school construction and opening in the district. Of the thirty-six elementary schools that were either newly constructed or newly opened between 1962 and 1975, thirty-one were over 93% black on opening and four were 94% white. Only one was integrated to any significant degree. This pattern is contrary to the teachings of the Supreme Court that "the responsibility of the local authorities * * * is to ensure that future school construction * * * [is] not used and [does] not serve to perpetuate * * * the dual school system." Columbus Board of Education v. Penick, supra at 678.

Another practice that had a foreseeable and predictable segregative effect is the Board's post-1964 busing policy. Despite the newly opened schools mentioned above, overcrowding in some schools in the district continued or recurred. The Board of Education responded by busing students from the overcrowded areas to underused facilities. Intact busing was replaced with block busing. See note 20, supra. Significantly, although overcrowding occurred in both black and white schools, and both black and white schools were available for transfer, there has been black-to-black, black-to-white and white-to-white busing, but very little white-to-black busing. Of the 3,190 black students bused because of overcrowding in 1973, 81% were bused to schools that were over 75% black. Similarly, of the 575 whites bused because of overcrowding, 85% were sent to schools

that were over 94% white. Only twenty-seven whites (4.7% of the whites bused because of overcrowding] were sent to predominately black schools.

The district court specifically found that 63.7% of the blacks bused for overcrowding in 1974-1975 were assigned to schools that were between 90% and 100% black; 67% were similarly assigned in 1975-1976. Liddell v. Bd of Ed., City of St. Louis, Etc., supra at 1337. The court noted that one reason that there was not more racial mixing in these transfers was that the overcrowded black schools were in far north St. Louis while the white schools were located in the south. It concluded that "[n]othing improper can be inferred from busing students to closer schools." Id. We cannot agree. First, the record simply does not sustain the finding that the differences in distance were significant. Second "the measure of the post-Brown conduct of a school board under an unsatisfied duty to liquidate a dual system is the effectiveness, not the purpose, of the actions in decreasing or increasing the segregation caused by the dual system. * * * As was clearly established in Keyes and Swann, the Board had to do more than abandon its prior discriminatory purpose." Dayton Board of Education v. Brinkman, _____ U.S. _____, 61 L.Ed.2d 720, 734 (1979). In alleviating overcrowding, the Board authorized substantial student transportation. This transportation could have been used to help establish a unitary school system in St. Louis. Instead, it was used to perpetuate a dual dystem. Any findings to the contrary are clearly erroneous.

The permissive transfer policy also served to perpetuate segregation in the

St. Louis school system. Originally adopted in the hope that it would help ameliorate the segregative consequences of neighborhood schools, the policy allowed students to transfer out of their assigned school to other schools in which space was available. Until 1974, however, parents had to assume responsibility for providing transportation. As a result, affluent white students were able to transfer away from integrated school assignments to all-white schools. In 1974, the policy was amended so that the school district provided transportation. Nevertheless, the policy had a segregative effect for many years.

2. Faculty and Administrator Segregation.

The perpetuation of a dual school system may be manifested not only in student assignment policies but also in the assignment of teachers and administrators. "Independent of student assignment, where it is possible to identify a 'white school' or a 'Negro school' simply by reference to the racial composition of teachers and staff, the quality of schools and equipment, or the organization of sports activities, a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown." Swann v. Charlotte-Mecklenburg Bd. of Ed., supra at 18.

Before 1954, teachers and administrators were segregated by law. After Brown, the express policy of the Board was to maintain then-current teaching assignments. In addition, the acknowledged resistance of some school principals and the community was found by the district court to "have limited the degree of racial mixing of

school faculties." Id. at 1346. Indeed, racial segregation of faculties has been as pervasive as student segregation.

In 1962, only thirty-three of the system's 1,272 black elementary school teachers taught in schools with less than a 90% black student enrollment, and only thirty-four of the 283 black high school and vocational teachers were assigned to schools that were less than 99% black. Ten years later, during the 1972-1973 school year, thirty elementary schools still had all-white faculties, twenty-seven elementary schools still had all-black faculties and ninety-one faculties were at least 90% one race. And this was at a time when the faculty was 46.4% white, 53.6% black district-wide.

The district-wide pattern of faculty segregation is dramatized by the assignment of faculty to newly opened schools. Eleven of the schools opening since 1962 had faculties that were 100% black upon opening, four had faculties that were 100% white and only four had faculties that were between 40% and 60% black. The evidence clearly indicates that black faculty members were assigned primarily to black schools and that white faculty members were assigned to white schools.

The distribution of black administrators throughout the district reflects a similarly race-conscious assignment pattern. The central office was desegregated by 1973. In the district offices however, administrators were clearly assigned on the basis of race. The Central-Vashon and Beaumont-Sumner districts, which were predominately black, were staffed 100% black at the district level;

the Cleveland-Southwest District, nearly all-white in student population, was staffed 100% white at the district office. Further, there were no black administrators in racially identifiable white schools.

The district court, while acknowledging this pattern, concluded that the racial composition of faculty and administration did not influence the racial composition of the school. "Racial identifiability of schools is not now and was not in the past a result of the Board's failure to mandatorily achieve more racially balanced faculty." Liddell v. Bd. of Ed., City of St. Louis, Etc., supra at 1347 (footnote omitted). Rather, the district court assigned exclusive responsibility for the racial identifiability of schools to the City's demographics. Id. We cannot agree. The record contains substantial expert testimony indicating that public perception of the racial identity of a school can be maintained as effectively by a one-race faculty as by a one-race student body and public perception of the racial identity of a school can be, and often is, a powerful factor in shaping the residential patterns of a neighborhood. By maintenance of a segregative faculty assignment policy, the St. Louis Board of Education encouraged the perpetuation of its dual school system.

VI. OTHER FACTORS CONTRIBUTING TO SEGREGATION

The district court, having erroneously concluded that the Board of Education discharged its duty to desegregate the St. Louis school system by adopting a neighborhood school plan and by refraining

from discriminatory actions thereafter, went on to find that factors over which the Board of Education had no control are substantially responsible for today's segregation in the St. Louis school system. The most important factor is said to be the dramatic change in the demography of the City. These demographic changes were found by the district court to have been caused by discriminatory housing, urban renewal and highway land acquisition policies of the federal government; state laws and policies mandating discrimination in housing;[21] discriminatory private policies, including red-lining and separate newspaper listings for "colored" housing; and general population movements unrelated to any specific governmental policies.

The initial problem with this finding is that it is based on the two erroneous conclusions noted in the preceding paragraph. The second problem is that it is not supported by the record. The facts are that most schools in the heart of North St. Louis were black in 1954 and remain black today, and that most schools in South St. Louis were white in 1954 and remain white today. The Board of Education has simply never dealt with this overwhelming reality. If the Board had dealt with the problem in 1954-1956 and had implemented a plan for integrating the schools in North and South St. Louis, we would have a different case today. We would have to examine the question from an entirely different pcint of view. See Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424 (1976). But it did not; the schools remain segregated and we have no choice but to adopt a practical remedy to achieve an integrated school system.

We do recognize that many of the factors cited by the Court, including actions of the state and federal governments, have intensified racial segregation in North St. Louis. We have taken this fact into consideration in determining the appropriate remedy in this case. We have no alternative but to require a system-wide remedy for what is clearly a system-wide violation.

VII. THE REMEDY

Segregation in the elementary and secondary schools in St. Louis must now be eliminated. An integrated system must be devised and implemented promptly. In no other way can the constitutional right to an equal educational opportunity be assured to all children of St. Louis. With careful planning, expert advice, broad community participation and good faith, a plan to integrate the schools can be devised and implemented which will meet constitutional requirements.

1. Remedial Alternatives Proposed By The Parties

The major focus of the plan submitted by the Board of Education is the creation of junior high schools. Three or more junior high schools would be opened each year over a period of four years and as many of these as possible would be assigned equal numbers of black and white students. At this ratio of assignment, there would necessarily be some all-black junior high schools remaining. All the junior high schools would be aligned into feeder patterns designed to reduce racial isolation in the high schools.

The Board also proposed the creation of a new Business and Office Magnet High School, two specialty high schools, the expansion of enrollment at Metro High School and the conversion of O'Fallon Technical High School to a full-day comprehensive technical high school with an enrollment policy aimed at securing "appropriate representation of both races." The Board further proposed that the racially isolated schools be associated for special projects and activities, the purpose being to provide opportunity for significant interracial contacts and experiences. These proposals were designed to provide some racial mixing for the remaining all-black and all-white schools. The Board additionally suggested that it undertake a feasibility study of an Educational Park, designed to house a variety of magnet and specialty high schools. It expressed the hope that the Park could be studied, designed and built in about four years.

The Board's plan did not purport to integrate grades kindergarten through six. The plan did provide, however, for the establishment of seven magnet elementary schools with proposed enrollents of 50% white and 50% black students. These magnet schools would offer various educational alternatives to the traditional classroom setting in the City's regular elementary schools. These schools, together with two magnet high schools, were established pursuant to the district's order in April of 1977. The specialty and magnet schools currently enroll about 13% of the City's school population. The racial goals established by the Board for its magnet and specialty schools have not been met.[22]

The Board finally urged that if something more was required to desegregate the schools, the district court should require a metropolitan plan encompassing the neighboring two tiers of schools in St. Louis County. It argued that only such a plan would stabilize the schools in the City and the metropolitan area.

The Caldwell group proposed a plan prepared by Dr. Michael J. Stolee, Dean of Education at the University of Wisconsin, Milwaukee. Under the Stolee plan, using the techniques of pairing, clustering and boundary adjustments, each elementary and secondary school in the system would be brought into rough conformity with the overall 75% black-25% white racial mix of the school district. Schools whose existing black-white ratio is within 15% of the district-wide ratio would be unaffected by the plan. Under the plan, the high schools were projected to have from 63% to 80% black students, the elementary schools to have between 51% and 85% black students.

The original plantiffs proposed a plan prepared by Dr. David L. Colton, Associate Professor of Education at Washington University, St. Louis. The Colton plan would convert the St. Louis public school system from a two-tier system (kindergarten through eight and nine through twelve) to a four-tier one (kindergarten through three, four through six, seven through nine and ten through twelve). The first tier schools would continue as "neighborhood schools." Second tier students would be housed in the same building as the first tier. Assignments to the second tier would be made to achieve a 55% black-45% white student population in as many second tier units as possible. The

remaining second tier units would enroll only black students. Third tier students would be housed in existing school buildings adopted for use as junior high schools. The student assignment pattern for these schools would be designed to achieve a racial distribution of 60% black and 40% white. There would be no all-white junior high schools but approximately one-third of the junior high schools would continue to enroll only black students. Fourth tier students would be housed in seven high schools. Five of these schools would have a 60% black-40% white racial mix. Two would be all black. Student assignments would be made so that no student would attend both an all-black junior and senior high school. Every black student would thus receive at least one-third of his or her education in grades four through twelve in an integrated environment. Every white student would be in an integrated school after the third grade. The City's special education programs would be combined with those in St. Louis County, and a desegregation planning group with representation from all groups in the community would be established. This planning group would focus on teacher training administrative reassignment, community support and student response.

The United States Department of Justice took the position that either the Stolee plan or the Colton plan would desegregate the present dual school system. It also stated that integration could be achieved if a plan was developed in accordance with the views of its expert witness, Dr. Gary Allen Orfield. Dr. Orfield testified: (1) that currently all integrated schools should be left

alone and every effort should be made to stabilize them for the foreseeable future;[23] (2) that all white schools, and as many black schools as possible, should be integrated with a substantially even relationship (50% black-50% white) between minority and majority children, and that this be done at every grade level, but particularly at the elementary level;[24] (3) that specialized programs should be included in the neighborhood schools so that parents are assured that their children will not be locked in a slow-moving curriculum; (4) that free choice, intra and inter-district transfers should be permitted, particularly for black students who would be left in all-black schools[25] and that positive educational components should be built into the plan; (5) that magnet schools and specialty schools should be continued and made available to both City and surburban students, but only as an adjunct to a comprehensive desegregation plan;[26] (6) that school personnel should be integrated at every level of employment and be assigned in a way that will not racially identify schools; and (7) that the community should be deeply involved in developing, explaining and policing the integration plan.

Dr. Orfield agreed with the Board of Education that an inter-district remedy funded by the State of Missouri would have the best chance of permanently integrating the schools in the metropolitan St. Louis area.[27]

2. The Constitutionally Permissible Alternatives

The plan proposed by the Board of Education will not effectivelv desegre-

gate the public schools of St. Louis. It does little or nothing to integrate grades one through six. Black elementary schools will remain black and white elementary schools will remain white. Further, the plan unnecessarily delays desegregation at the junior and senior high school levels--the junior high schools would be integrated over a four-year period, the high schools over a seven-year period. These time periods are simply unacceptable after a delay of twenty-five years. Similarly, the Board's tentative proposal to establish an Educational Park at the high school level is a futuristic solution to a current problem. While such an instutition could serve as a useful proposal to open a Park four years hence is inadequate to meet the constitutional requirement to desegregate now. In short, the Board's plan offers too little too late.

The Stolee plan would desegregate both the elementary and the secondary schools, at least temporarily. The district court found, however, that the probable result of the implementation of the plan would be an all-black school system in a few years. In light of this finding, we do not require that the Stolee plan be implemented, but the Board remains free to adopt the plan, or those portions of it, that meet the consitutional standards set forth herein.

Having made these observations with respect to the Board's plan and to the Stolee plan, we have no alternative but to remand to the district court with instructions to take those steps necessary to bring about an integrated school system in accordance with the guidelines and time tables set forth below:

a. The Board of Education is to be given the principal responsibility for developing and implementing a comprehensive plan to integrate the school system.[28] In fulfilling this responsibility, the Board shall work with the parties of this lawsuit, a broadly based interracial committee to be named by the district court and an expert, or experts, to be named by the district court. The Board shall be required to submit to the district court its plan for integrating the school system within sixty days of the issuance of this Court's mandate. The district court shall promptly review the plan to ensure that it complies with the mandate of this Court. The plan shall be implemented no later than the beginning of the 1980-1981 school year under the direction of the district court.

b. Voluntary techniques will not effectively desegregate the St. Louis school system. See Liddell v. Caldwell, supra at 772, note 8. The Board is, therefore, to be required to develop a system-wide plan for integrating the elementary and secondary schools of the district. On the basis of this record, two approaches appear to be constitutionally permissible and practical. See Davis v. Board of School Commrs., 402 U.S. 33 (1971).

(1) The Colton Approach. If this approach is to be followed, it must be modified so that all four tiers will be integrated. This modification may require an adjustment in the black-white ratios suggested by Colton.[29] Black students must be given a substantially equal opportunity to attend integrated schools during the years they attend the public schools.

(2) The Orfield Approach. If this approach is to be followed, the boundary lines and assignment patterns for schools that are presently integrated shall remain substantially as they are at present. See United States v. School District of Omaha. 521 F.2d 530, 546-547 (8th Cir.), cert. denied, 423 U.S. 946 (1975). For this purpose, a school with a black enrollment of between 30% and 50% shall be considered to be integrated.[30] The student populations of these schools shall be maintained at as close to these percentages as is possible for a reasonable period not to exceed five years.[31] The remaining white schools (those more than 70% white) in the district shall be integrated with a sufficient number of black schools to achieve student populations that are not to be less than 30% nor more than 50% black. The student populations of these schools shall also be maintained at these percentages to the extent possible for a reasonable period not to exceed five years. The integration may be accomplished by those techniques that have been approved by the Supreme Court or this Court. The burdens of integration shall be borne as equally as possible by blacks and whites. Davis v. Board of School Commrs., supra at 37; Swann v. Charlotte-Mecklenburg Bd. of Ed., supra at 25, United States v. School District of Omaha, supra at 547.

c. Each approach has its strengths and weaknesses. Unfortunately under either approach, some all or virtually all-black schools in North St. Louis will remain. The Board shall use other techniques to ensure students in all schools will receive equal educational opportunities. It shall seek the help of the state and federal governments in financing them.[32]

These techniques may include the following:

(1) Developing and implementing compensatory and remedial educational programs. See Milliken v. Bradley, 433 U.S. 267 (1977).

(2) Developing and implementing programs providing less than full-time integrated learning experiences.

(3) Developing and implementing a comprehensive program of exchanging and transferring students with the surburban school districts of St. Louis County. The Board shall seek the cooperation of such school districts, the State Board of Education and the United States in developing and implementing such a plan. See Liddell v. Caldwell, supra at 774.

(4) Maintaining existing magnet and specialty schools, and establishing such additional schools as needed to expand opportunities for an integrated education.

(5) Establishing an Educational Park.

(6) Continuing and expanding a policy of permissive transfers in the district.

d. No inter or intra-district permissive transfer shall be permitted which will increase the segregated nature of either the sending or receiving school. See Booker v. Special School Dist. No. 1, Minneapolis, Minn., 351 F.Supp. 799, 811 (D. Minn. 1972).

e. Transportation costs incurred pursuant to the provisions of an approved plan will be paid by the Board of Education.

f. The consent decree, insofar as it pertains to faculty integration, shall be fully implemented and additional steps taken to ensure that school personnel at every level will be integrated.

g. It shall be the responsibility of the district court to assure that "future school construction and abandonment are not used and do not serve to perpetuate or reestablish the dual system." Swann v. Charlotte-Mecklenburg Bd. of Ed., supra at 21. Accordingly, any construction of new schools, or addition to old schools other than that contemplated in the plan, shall be submitted to the district court for approval. See Booker v. Special School Dist. No. 1, Minneapolis, Minn., supra at 811.

h. The district court shall retain jurisdiction to ensure that the plan effectively integrates the entire St. Louis school system and to ensure that the plan is, in fact being carried out. To assist the court in its monitoring function, the court's order should include reporting provisions requiring that reports on the operation of the plan be filed periodically with the court for a period of at least three years.

3. Attorneys' Fees

The Liddell group "and other intervening plaintiffs" requested that the district court allow them their costs and attorneys' fees. The record is unclear as to whether the Caldwell group was among those making such a request. The district court denied all of these requests, apparently on the theory that none of the plaintiffs prevailed below. Liddell v.

Bd. of Ed., City of St. Louis, Etc., supra at 1366, 1390. Both the Liddell and Adams groups appeal this denial, claiming that they are entitled to attorneys' fees under 42 U.S.C. Section 1988. On the basis of our holdings on the merits, we affirm the denial as to the Adams group and reverse as to the Liddell group. On remand, the district court shall determine reasonable attorneys' fees for the Liddell group (and for the Caldwell group, if they requested them) in accordance with the general principals set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). See also Cleverly v. Western Elec. Co., 594 F.2d 638 (8th Cir. 1979); Brown v. Bathke, 588 F.2d 634 (8th Cir. 1978).

The appellants requesting attorneys' fees on appeal shall submit a motion to that effect within thirty days of the filing of this opinion. Documentation of their claims shall be included. The appellees shall then be given fifteen days in which to file their objections to these motions.

Reversed and remanded for further proceedings consistent with this opinion. The mandate of this Court shall issue forthwith.

A true copy.

Attest:

CLERK, U. S. COURT OF
APPEALS, EIGHTH CIRCUIT

FOOTNOTES

1. See Appendix I.

2. At trial, St. Louis School Superintendent Robert E. Wentz, defined a neighborhood school as "a school that serves a specific geographic area defined usually in fairly close proximity to that school, the immediate area around that school."

3. See Appendix II.

4. The consent decree is set out in full as Appendix B to the district court's opinion, Liddell v. Bd. of Ed., City of St. Louis, Etc., 469 F.Supp. 1304, 1387 (E.D. Mo. 1979). The decree explicitly stated that nothing therein was to be deemed an admission by the Board of Education that the plaintiffs' allegations were true. It did include, however, an admission that "segregation is present, as a matter of fact, in the Public School System of the City of St. Louis * * * Id. at 1389. To remedy that segregation, the decree required the Board of Education "to take affirmative action to secure unto plaintiffs their right to attend racially nonsegregated and nondiscriminatory schools * * * and * * * to take the affirmative action hereinafter set forth." Id. at 1389. The decree then required the Board to (1) progressively desegregate its faculty so that, in 1976-1977, 10%, in 1977-1978, 20%, and in 1978-1979, no less than 30% of the teachers and staff in each school would be of the minority race in that school; (2) consider the objective of eradicating segregation when making decisions regarding the construction or closing of schools; (3) make a study, to be submitted to the

court in January of 1977, on the realignment of elementary feeder schools to high schools to reduce segregation at the high schools, and (4) make a report to the court on whether magnet elementary schools and special subject high schools would be of assistance in eliminating segregation and on the feasibility of system-wide curriculum improvement. Jurisdiction over the case was retained by the district court.

5. We note that the lengthy trial produced over 7,000 pages of transcript and about 1,200 exhibits which both expanded and supplemented the facts set forth in the stipulation filed more than three years before trial. The district court considered the entire record as do we.

6. Adams and the City also argued that the court had no authority to enforce the consent decree because no violation had occurred. They have again made that argument in their appeal to this Court. The district court considered this position "untenable." Liddell v. Bd. of Ed., City of St. Louis, Etc., supra at 1365. In light of our disposition of this case, we have no occasion to consider the argument.

7. An additional issue on appeal is whether the district court erred in holding moot Adams' contention that the Board's policy regarding admission to the magnet schools discriminated against white non-public students. The district court held the question to be moot because the policy was abandoned in the 1978-1979 school year. Liddell v. Bd. of Ed., City of St. Louis, Etc., supra at 1354. We agree.

8. The Board of Education notes that, besides the neighborhood school

policy, its 1954-1956 plan included educational programs for parents and faculty, and interschool visitations and lectures for the students designed to lessen racial tension. We have no reason to doubt that the Board took whatever steps it could to lessen conflict within the school system and community but these steps did not fulfill the defendants' constitutional duty to disestablish the dual system. In the interest of avoiding conflict, the Board took steps to ensure that no significant desegregation occurred.

The Board also emphasizes that schools with city-wide enrollment, such as Harris Teachers College and special elementary schools for handicapped students, were desegregated pursuant to the 1954-1956 plan. This fact, however, does not in any way excuse the Board's failure to desegregate the regular elementary and secondary schools in the City.

9. The number of white students at Southwest is estimated based on 1953-1954 student enrollment figures.

10. See Appendix III detailing enrollment statistics for 1975-1976. Statistics for 1979-1980 have been filed with this Court by the defendant School Board.

11. Under the 1954-1956 Board plan, students were assigned to schools close to their homes. In that sense, the plan was a "neighborhood" plan. The boundary lines for the high schools, however, were drawn so as to assign the students living in the predominately black neighborhoods to the two pre-Brown black high schools. See Appendix II. Following implementation of the School Board plan, both of these

schools opened with 100% black enrollments. The elementary school boundaries were also drawn so that the schools remained highly segregated.

An examination of the maps and population statistics in this record makes it clear that the Board could have, without sacrificing the neighborhood concept, drawn the boundaries so as to include significant numbers of white students in the formerly all-black schools. A reading of the record also makes clear, however, that strong community opposition has prevented the Board from integrating the white children of South St. Louis with the black children of North St. Louis.

12. In Keyes, the Supreme Court stated:

> Our Brother Rehnquist argues in dissent that Brown v. Board of Education did not impose an "affirmative duty to integrate" the schools of a dual school system but was only a "prohibition against discrimination""in a sense that the assignment of a child to a particular school is not made to depend on his race. . . ." Infra, at 258. That is the interpretation of Brown expressed 18 years ago by a three-judge court in Briggs v Elliott, 132 F Supp 776, 777 (1955): "The Constitution, in other words, does not require integration. It merely forbids discrimination." But Green v County School Board, 391 US 430, 437-438 (1968), rejected that interpretation insofar as Green

> expressly held that "School Boards . . . operating state-compelled dual systems were nevertheless clearly charged [by Brown II] with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Green remains the governing principle.

Keyes v. School District No. 1, 413 U.S. 189, 200 n.11 (1973).

13. The School Board relies on several Sixth Circuit cases upholding neighborhood assignment policies that resulted in foreseeable racially imbalanced schools. See Higgins v. Board of Education of City of Grand Rapids, 508 F.2d 779 (6th Cir. 1974); Deal v. Cincinnati Board of Education, 419 F.2d 1387 (6th Cir. 1969); Deal v. Cincinnati Board of Education, 369 F. 2d 55 (6th Cir. 1969). These cases are easily distinquished from the present case. First neither Higgins nor Deal involved a completely new neighborhood system with redrawn attendance zone boundaries; both Cincinnati and Grand Rapids had used a neighborhood school system for many years. More importantly, neither Higgins nor Deal involved a situation in which segregation had been imposed by law until the time of Brown.

14. Despite this persuasive evidence, the district court concluded that the 1954-1956 plan "did not have the foreseeable consequence of bringing about or maintaining segregation, "primarily because "[t]he massive changes in the racial makeup of the City in the late 1950's and 1960's were not foreseeable by the

Board." This conclusion is clearly erroneous. The Board knew that when its plan was implemented, the white schools in South St. Louis would remain white and the black schools in the "core" area of the City would remain black. If the Board had fulfilled its constitutional duty in 1954-1956 and the schools were thereafter resegregated by massive changes in the racial makeup of the City, we would have another case.

15. Former Superintendent William Kottmeyer testified that "a good many" white students exercised the continuation transfer option in order to remain in predominately white schools. The 1962 Civil Rights Commission report stated that over 40% of the black students assigned to schools other than the ones to which they had previously been assigned elected to remain in their former schools.

16. The School Board asserts that the continuation transfer option was simply the extension of a long-standing policy that permitted a student to remain in a given school even though he moved his residence out of that school's attendance zone. We disagree. That policy, which would benefit the School Board by helping to keep the enrollment level at each school constant, is obviously not the same as the transfer policy included in the 1954-1956 plan. The latter policy, which would aid the School Board in no way other than to reduce public outcry by ensuring that no significant desegregation occurred, allowed students to defeat the purpose of the plan by electing to remain in their former school after the Board had changed the attendance zones for those schools.

17. The defendants assert that the 1954-1956 Board plan was widely acclaimed

by civil rights leaders. For example, the author of the 1962 Civil Rights Commission Report, Wylie H. Davis, described the 1954-1956 transitions as "solidly conceived and brilliantly carried off." We find no reason to disagree with the Davis statement. The problem is that the "transitions" he spoke of did not desegregate the school system. A careful reading of the report reveals that Mr. Davis recognized that the School Board plan had very little effect on the segregated nature of the school system despite the hopes some may have had for the new policies.

18. As we noted earlier, 82% of the black students currently attended "neighborhood" schools that are more than 90% black.

19. The district court found that the "intact busing policy had a disproportionate impact on black children * * * because black children * * * were bused more often than whites." Liddell v. Bd of Ed., City of St. Louis, Etc., supra at 1336. It did not, apparently, consider the fact that the black students so bused were maintained as separate entities in the host white schools as a part of the impact of this technique on the black students. This despite the fact that Dr. Clifford P. Hooker, an expert witness appearing for the Board of Education, acknowledged the detrimental effects of intact busing on both black and white children. Cf. Jackson v. Marvell School District No. 22, 425 F.2d 211 (8th Cir. 1970) (overturning "desegregation" plan that required students to remain with the teacher they had under segregated system).

20. The modification replaced intact busing with block busing, whereby students from certain blocks in the overcrowded

school's attendance zone were bused to other schools and incorporated into those schools. As implemented, this policy, too, was to have segregative effects, as detailed later in this opinion.

21. The court stated:

> Prior to 1954 a pattern of racial housing segregation prevailed in the City and discriminatory restrictions against blacks were enforced by the courts and agencies of the State of Missouri. Dolan, et al. v. Richardson, et al., 181 S.W. 2d 997 (Mo.App.St.L., 1944); Shelley v. Kraemer, 355 Mo. 814, 198 S.W.2d 679 (en Banc, 1946) rev'd, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1947); and Jones v. Alfred H. Mayer Co., 225 F. Supp. 115 (E.D. Mo. 1966), Aff'd, 379 F.2d 33 (8th Cir. 1967), Rev'd, 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed 1189 (1968).

Liddell v. Bd. of Ed., City of St. Louis, Etc., supra at 1323.

> We note that the date of the Jones v. Alfred H. Mayer Co. decision and add that some suburban communities in Missouri continue to try to enforce discriminatory housing restrictions against blacks. See Park View Heights Corp. v. City of Black Jack, 605 F.2d 1033 (8th Cir. 1979); United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974), cert. denied, 422 U.S. 1042 (1975); Park View Heights Corp. v. City of Black

Jack, 467 F.2d 1208 (8th Cir. 1972).

22. In the current school year (1979-1980), the secondary magnet school populations are approximately 65% black, and the elementary magnet schools range from 58% to 93% black. The special secondary schools range from 66% to 100% black, and the special elementary schools, excluding Lutheran Hospital, ranged from 15% to 100% black.

23. Dr. Orfield testified that

> when you have an integrated neighborhood with an integrated school, you should never close that school; * * * you don't bus children into that school, and you should do everything possible to keep it as an integrated school, and to get people to notice that if they move into that neighborhood, they're not going to be moving into a transitional neighborhood, but they're going to be moving into one that has a stably integrated school.

24. Dr. Orfield testified that it is best to begin the integration process in the first grade. He also testified that it is ill-advised and unworkable to start desegregation at the junior high level. He stated:

> If you visit schools, you find a lot more difficulty in junior highs where students are generally in a difficult passage point in life anyway than you find in elementary schools which are much, much easier to desegregate.

> * * * [T]here is also * * * stark evidence that the educational advantages from desegregation are through the schools that are * * * desegregated * * * from the first grade, so if I were going to choose one aspect of a school system to desegregate, junior high would probably be the last one, * * * the elementary schools would be the first one.
>
> * * *
>
> * * * [T]here are many reasons why this is probably true. One is that children in the first grade have very little achievement gap compared to what they have later.
>
> Another is that they have very little racial consciousness * * *.

Other expert witnesses agreed that black children will achieve academic gains in an integrated school, particularly at the elementary level. They disagreed as to the extent of the gains and whether there would be gains if the integrative experience occurred only at the junior high school level. The experts also agreed that white students did not suffer an achievement loss in an integrated school setting. See R. Crain & R. Mahard, DESEGREGATION AND BLACK ACHIEVEMENT (1977), wherein seventy-three studies on the effect of desegregation on black achievement were reviewed. "A majority of these studies conclude that desegregation has a beneficial effect on black achievement test scores. * * * A comparison of 73 studies leads to one important conclusion: that desegrega-

tion is noticeably more likely to have a positive impact on black test scores if it begins in the earliest grades, and effects are especially likely to be positive for first graders." Id. at Abstract. See also Pettigrew, Useem, Normand & Smith, Busing: A Review of "The Evidence," THE PUBLIC INTEREST, Winter 1973, at 88.

25. Dr. Orfield testified that

> to encourage cross-district transfers, * * * there [should] be * * * [a] right to transfer to vacant spaces in the suburbs and also positive educational alternatives [should be] built into the metropolitan area on a voluntary basis * * *.
>
> * * * *
>
> The major limitation is that voluntary transfer plans never have a broad system-wide effect, but [they] would * * * be important [and would] give an opportunity to more children * * * to [begin] to develop some kind of in[t]er-racial contacts with some of the suburban school systems.

26. Dr. Orfield testified:

> [A] Magnet School plan is very feasible, workable approach to desegregation in a small city with a small ghetto or barrio [community] * * *.
>
> A Magnet School plan in itself has never been successful in desegregating a big city. It

almost always produces no significant white transfers into predominately black or Latino schools. * * * [I]t will not produce substantial desegregation without a compulsory plan backing it.

* * * [I]t is valuable in desegregation because it builds in educational choice for parents, and * * * you ought to take advantage of it in any good desegregation plan * * *.

* * * *

* * * Milwaukee, for example, has desegregated about two-thirds of its schools * * * largely through voluntary transfers because parents know that if they don't transfer voluntarily they'll be reassigned.

27. Dr. Orfield testified:

[T]he most stable kind of plan is a metropolitan-wide proportional enrollment plan * * *.

* * * *

Anything that can be done to involve the surburban districts should be done.

In Milliken v. Bradley, 418 U.S. 717, 744-745 (1974), the Supreme Court stated that, in order for an inter-district remedy to be appropriate,

> it must be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation.

St. Louis County surburban school districts, purusant to state law prior to Brown, collaberated with each other and with the City of St. Louis to ensure the maintenance of segregated schools. See Act of April 9, 1917, 1917 Mo. Laws 498 (repealed 1957) (providing for the "Colored Consolidated High School District " of St. Louis County); Act of February 17, 1865, Section 13,1865 Mo. Laws 170 (repealed 1957)(providing, inter alia, for the inter-district transfer of "colored children"). Included among the pre-Brown practices of these districts was the assignment and transportation of black students living in the suburbs to black schools in the City. Moreover, as noted in Part VI of this opinion, governmental policies may have intensified segregation in the St. Louis area. See U. S. v. Bd. of Sch. Com'rs of City of Indianapolis, 541 F. 2d 1211 (7th Cir. 1976), vacated and remanded, 429 U.S. 1068 (1977), reconsidered, 573 F.2d 400 (7th Cir.), cert. denied, 439 U.S. 824 (1978), on remand, 456 F.Supp. 183 (S.D. Ind. 1978); Newburg Area Council, Inc. v. Board of Ed., Jefferson Cty., Ky., 489 F.2d. 925 (6th Cir. 1973), vacated and remanded, 418 U.S. 918 (1974), reconsidered, 510 F.2d 1358 (6th Cir. 1974), cert. denied, 421 U.S. 931 (1975), further proceedings sub nom. Cummingham v.

Grayson, 541 F.2d 538 (6th Cir. 1976), cert. denied, 429 U.S. 1074 (1977); Evans v. Buchanan, 393 F.Supp. 428 (D. Del.), aff'd, 423 U.S. 963 (1975), further proceedings, 416 F.Supp. 328 (D.Del.), stay denied, 424 F.Supp. 875 (D. Del.), appeal dismissed, 429 U.S. 973 (1976), Modified and remanded, 555 F.2d 373 (3d Cir.)(en banc), cert. denied, 434 U.S. 880 (1977), on remand, 447 F.Supp. 982 (D.Del.), aff'd, 582 F.2d 750 (3d Cir. 1978)(en banc), petition for cert. filed, 48 U.S.L.W. 3097 (U.S. Oct. 20, 1978) (Nos. 78-671, 78-672).

28. The costs of the plan shall be apportioned among the defendants as determined by the district court. See Part VI of this opinion.

29. Compulsory attendance at the kindergarten level is not required. Students attending this grade need not be included in the plan.

30. The district court found that "stable integration in a particular school is generally achieved only when the percentage of blacks remains below 50%." Liddell v. Bd. of Ed., City of St. Louis, Etc., supra at 1327. The expert testimony in this record indicates that the factors affecting the stability of an integrated school are numerous and vary from community to community. Among the important factors cited by the experts are: the availability and costs of other alternatives; the extent to which the integrated school system is supported by school administrators, faculty and community groups and leaders; and the quality of education offered in the integrated schools. On this record, we cannot disagree with the district court that a black student population at or below 50% in each school will contribute to the preservation of a racially unified school system in St. Louis.

The record also contains persuasive testimony that integration will be successful only if minority students are represented in numbers sufficient to reduce the feelings of racial isolation. While this number cannot be fixed precisely, we are convinced from this record as a whole that minority populations must be maintained at at least the 30% level.

31. In view of the long period of racial discrimination in the St. Louis schools, a short period of mandatory stabilization is required to enable the desegregation plan to be effective. The time schedule imposed by this opinion is not a long-term "inflexible requirement." See Pasadena City Bd. of Educ. v. Spangler, supra at 434.

32. The consent decree required the parties to study the feasibility of curriculum improvements to improve the quality of education throughout the system. We require that this study be continued and that compensatory and remedial programs be instituted.

33. We note that federal funds may be available to the school district to help defray the cost of this transportation under the Emergency School Aid Act. At oral argument, the State's attorney assured the Court that state aid would also be available and would pay up to 80% of the district's student transportation costs. See Mo.Ann. Stat. Section 163.161 (1979).

CERTIFICATION OF SERVICE

I hereby certify that a copy of the above and foregoing Petition for Writ of Certiorari has been served upon all parties hereto by depositing the same in the United States mail this 3rd day of May, 1980, addressed as follows:

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I further certify that a copy has also been served upon the following attorneys, who represented parties in the consolidated appeal before the Eighth Circuit Court of Appeals, and which attorneys may have an interest in this Petition, by depositing the same, postage prepaid, in the United States mail this 3rd day of May, 1980.

Supreme Court, U. S.
FILED
JUL 15 1980
MICHAEL RODAK, JR., CLERK

No. 79-1752

In the Supreme Court of the United States

OCTOBER TERM, 1979

JANICE ADAMS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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BRIEF FOR THE UNITED STATES IN OPPOSITION

QUESTIONS PRESENTED

1. Whether the court of appeals erred in holding that the St. Louis Board of Education failed to dismantle the racially dual school system that had been established by state law until 1954.

2. Whether the court of appeals erred in failing to order the district court to devise an inter-district desegregation remedy.

3. Whether the courts below erred in holding that petitioners' complaint in intervention was moot in light of changed circumstances arising after the conclusion of trial but before issuance of the district court's decision.

4. Whether the court of appeals erred in applying The Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. 1988) to deny attorney's fees to petitioners and to award such fees to prevailing parties that requested them.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A241–A291) is not yet reported. The opinion of the district court (Pet. App. A41–A240) is reported at 469 F. Supp. 1304.

JURISDICTION

The judgment of the court of appeals was entered on March 3, 1980. The petition for a writ of certiorari was filed on May 5, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 1972, plaintiffs ("Liddell, et al."), a group of black parents and their minor children who attended the public schools of the City of St. Louis, Missouri, commenced this class action alleging unlawful racial segregation in the operation of the St. Louis public schools. The complaint named as defendants the St. Louis Board of Education, members of the Board, and the superintendent and district superintendents of the school system (Pet. App. A45, A245).

On December 24, 1975, the district court approved a consent judgment and decree (Pet. App. A217–A221) that generally prohibited the defendants from discriminating on account of race and required them to take affirmative action to establish racially nonsegregated and nondiscriminatory schools. Six black pupils ("Caldwell, et al."), through their parents and next friends, and the St. Louis Chapter of the NAACP filed objections to the consent decree and sought to intervene. The court denied the motion for intervention

(Pet. App. A47–A49, A245–A246), but the court of appeals reversed. *Liddell* v. *Caldwell*, 546 F.2d 768, 771–772 (8th Cir. 1976), cert. denied, 433 U.S. 914 (1977).[1] Thereafter, petitioners (a group of white parents), Puelo, et al. (a second group of white parents), and the City of St. Louis intervened as plaintiffs.[2] The United States was also allowed to intervene as a plaintiff. In addition, the State of Missouri, the Commissioner of Education of the State of Missouri, and the State of Missouri Board of Education were added as defendants (Pet. App. A50, A52, A249).

In February and March of 1977, the School Board, in accordance with the consent decree, submitted its desegregation plan to the district court. In May 1977, the Liddell group, the NAACP, and the United States submitted separate alternate plans for desegregation under the consent decree. Finding that the only area of agreement among all parties was the magnet school program, the district court in July 1977 approved implementation of that aspect of the Board's plan (Pet. App. A50–A51, A248). In addition, in light of the recent decisions in *Milliken* v. *Bradley*, 433 U.S. 267 (1977), and *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406 (1977), the district court scheduled a trial "to determine the following: whether there has been any constitutional violation on the part of defendants,

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[1] The court of appeals also concluded that implementation of plans for a unitary school system should not be delayed beyond the commencement of the 1977–1978 school term (546 F.2d at 774).

[2] Although denominated plaintiff-intervenors, petitioners, the Puelo group, and the City of St. Louis have interests closely aligned with those of the defendants.

and, if so, what is its nature and extent. If a constitutional violation were found, the [c]ourt would consider implementing remedies, matching the extent and scope of any remedies found necessary to the extent and scope of any violation which may be found" (Pet. App. A52).

Following a bench trial on these issues, the district court rendered its decision on April 12, 1979. *Liddell* v. *Board of Education of the City of St. Louis*, 469 F. Supp. 1304 (E.D. Mo. 1979) (Pet. App. A41–A240). The court held that the Board had satisfied its duty to dismantle the dual school system that existed by law at the time of *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954), and that the subsequent resegregation of the St. Louis school system beginning in approximately 1962 and continuing to the present was not attributable to the Board but instead was due to various socio-demographic changes (Pet. App. A67–A69, A83, A88, A91, A157, A163–A164, A223). The court also ruled that petitioners' complaint in intervention, which alleged that the policies of the Department of Health, Education, and Welfare with respect to the magnet schools had discriminated against white students who did not attend public schools, was moot in light of an intervening change in policy (*id.* at A142–A143, A223–A224). Finally, the court denied all requests for attorney's fees and ordered that each party bear its own costs (*id.* at A171, A223).

The court of appeals, sitting en banc, reversed in part and affirmed in part. The court held that the district court was in error in determining that the defendants by 1956 had fulfilled their "'affirmative duty

to take whatever steps might be necessary to convert [from a dual] to a unitary system in which racial discrimination would be eliminated root and branch'" (Pet. App. A254, quoting *Green* v. *School Board of New Kent County*, 391 U.S. 430, 437–438 (1968)); that the Board's actions since 1956 regarding "student assignment * * * [,] intact busing, school site selection, block busing, permissive transfers, and faculty assignments" had "maintained and strengthened" the dual school system (Pet. App. A258); and that the continued segregation of the St. Louis public schools, while "intensified" by socio-demographic factors over which the Board had no control, was not substantially caused by such factors (*id.* at A265–A266). For these reasons, the court of appeals concluded, after "[a] careful review of the record and the controlling law * * * [,] that the district court was clearly in error as to the constitutional requirements imposed on defendants who have formerly discriminated pursuant to state law * * * [and] in its evaluation of the extent to which the defendants have met those requirements" (*id.* at 254). Accordingly, the court ordered the Board to develop a comprehensive, system-wide integration plan to be implemented no later than the beginning of the 1980–1981 school year (*id.* at A272). In addition, the court of appeals affirmed the district court's determination that petitioners' complaint in intervention was moot (*id.* at A278 n.7). Finally, based on these holdings, the court of appeals affirmed the denial of attorney's fees to petitioners and remanded for an award of attorney's fees to the prevailing plaintiffs who had requested such fees (*id.* at A276).

On May 8, 1980, Mr. Justice Blackmun denied petitioners' motion for a stay of the judgment of the court of appeals. Petitioners' renewed application for a stay, addressed to Mr. Justice Rehnquist and referred to the Court, was denied on May 19, 1980.

ARGUMENT

1. Petitioners contend (Pet. 17–27) that the court of appeals erroneously held that the Board of Education had failed to meet its affirmative obligation to dismantle the dual school system that existed under state law in 1954. This issue involves only the application of established legal standards to the specific facts of this litigation, and it was, in any event, correctly decided by the court of appeals. Accordingly, further review is unwarranted.

This case turns on the narrow issue whether the dual school system extant in 1954 was disestablished by the Board's desegregation plan for 1954–1956. As the court of appeals explained, "[i]f the Board had dealt with the problem in 1954–1956 and had implemented a plan for integrating the schools in North and South St. Louis, we would have a different case today. We would have to examine the question from an entirely different point of view. See *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976). But it did not * * *" (Pet. App. A265; see also *id.* at A282 n. 14). This fact-bound issue depends on the particular record in the instant litigation, raises no legal question of general or recurring public significance, and does not create a conflict in the circuits. See, *e.g.*, *Rudolph* v. *United States*, 370 U.S. 269, 270 (1962);

Rice v. *Sioux City Cemetery*, 349 U.S. 70, 79 (1955); *Magnum Co.* v. *Coty*, 262 U.S. 159, 163 (1923).

Moreover, the court of appeals correctly concluded that the 1954 dual school system had not been disestablished. Although this inquiry is made more difficult by the fact that the Board kept no records concerning race between 1954 and 1962 (Pet. App. A65, A226 n. 5), the court of appeals, based on "[a] careful review of the record" (*id.* at A254), properly determined that the defendants had not fulfilled their "'affirmative duty to convert to a unitary system in which racial discrimination would be eliminated root and branch'" (*ibid.*, quoting *Green* v. *School Board of New Kent County*, 391 U.S. 430, 437–438 (1968)). See also *Dayton Board of Education* v. *Brinkman*, 443 U.S. 526, 538 (1979); *Columbus Board of Education* v. *Penick*, 443 U.S. 449, 458–460 (1979). And the burden of demonstrating "clear[ly] that state-imposed segregation has been completely removed" (*Green*, *supra*, 391 U.S. at 439) rested upon the Board (*Brinkman*, *supra*, 443 U.S. at 537).

Applying these settled principles to the facts of this case, the court of appeals found that the dual school system had not been eliminated. For example, the Board's own documents disclosed that the 1954 desegregation plan drew the school attendance zones in such a way as to "'relocate the smallest possible number of pupils'" (Pet. App. A256), and the attendance zones were drawn to correspond to the racially identifiable residential neighborhoods in St. Louis (*id.* at A256–A257, A279–A280 n.11). As a consequence, the plan was expected to result in an all-white student

population in one-half of the white elementary schools, an all-black student population in two-thirds of the black elementary schools, and populations of black students ranging from 82% to 99% in the remaining black elementary schools (*id.* at A251–A252). A similar situation was presented in the high schools (*id.* at A252). This segregative pattern of student populations continued to exist in 1962, when the Board again began to maintain records on the racial composition of schools (*id.* A252–A253). In addition, the plan was designed to have the least possible impact on segregated personnel assignments in 1954–1956 (*id.* at A256), and this pattern of faculty assignments was still in place in 1962 (*id.* at A253, A263). Finally, the segregated nature of the public schools has persisted to the present (*id.* at A218, A253–A254, A265).

In light of this and other evidence, the court of appeals concluded (Pet.App. A251; footnote omitted):

> The record in the present case clearly establishes that the St. Louis Board of Education's 1954–1956 "neighborhood school plan" had very little, if any, effect on the existing dual school system in the City. The new plan resulted in most of the student population continuing to attend one-race or virtually one-race schools. Although there are few exact figures for the period immediately following implementation of the plan because the Board of Education kept no records of school racial composition from 1955 to 1962, all the available data demonstrates that little desegregation actually occurred in 1954–1956.

In these circumstances, the court of appeals correctly relied on the decisions of this Court to hold that "merely establishing a racially neutral school assign-

ment system is not sufficient to eliminate the constitutional violation caused by past intentional discrimination" (*id.* at A254). See also *Brinkman*, *supra*, 443 U.S. at 538; *Penick*, *supra*, 443 U.S. at 458–460. While other factors beyond the Board's control undoubtedly affected the school system, the court of appeals correctly attributed to the Board the principal responsibility for maintaining and strengthening the segregated public schools in St. Louis.[3]

2. Petitioner contends (Pet. 27–30) that the court of appeals incorrectly failed to order an inter-district remedy that would encompass the non-party suburban school districts outside St. Louis as well as the school district of the City of St. Louis.

Petitioner's contention rests on a misunderstanding of the record. First, while the court of appeals did de-

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[3] Contrary to petitioner's assertion (Pet. 25), the decision below does not conflict with *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976). In that case, an intervening "racially neutral system of student assignment" had previously been adopted by the district court (*id.* at 434–435). In those circumstances, this Court held that the district court had exceeded its authority by requiring annual readjustment of attendance zones in order to ensure that there would not be a majority of any minority group in any public school. In contrast, the instant case does not present a situation in which " 'the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system' " (*id.* at 436, quoting *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 31–32 (1971)).

Nor, notwithstanding petitioner's suggestion (Pet. 23), did the court of appeals fail to accord due regard to the district court's findings of fact. Rather, the court of appeals carefully reviewed those findings and concluded that they were clearly erroneous (Pet. App. A261, A281–A282 n.14). See *Brinkman*, *supra*, 443 U.S. at 534–535 n.8.

termine that "some suburban communities in Missouri continue to try to enforce discriminatory housing restrictions against blacks" (Pet. App. A284 n.21) and that "St. Louis County suburban school districts, pursuant to state law prior to *Brown*, collaborated with each other and with the City of St. Louis to ensure the maintenance of segregated schools" (*id.* at A289 n.27), the court nowhere determined that there existed an inter-district violation, and its opinion makes evident that these observations about suburban housing patterns and pre-*Brown* school segregation did not rise to the same level of significance as the persistent segregative efforts of the St. Louis Board of Education. In any event, the court of appeals expressly left open, on remand to the district court, the opportunity for the Board to seek the cooperation of these other districts and to develop and implement a comprehensive urban-suburban student transfer program (*id.* at A274). And the district court has now ordered (App., *infra*, 4a–5a) that "every feasible effort" be made to work out a voluntary plan of pupil exchanges for the 1980–1981 school year to "assist in alleviating the school segregation in the City of St. Louis," that a plan be prepared "for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in the 1981–82 school year," and that "a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County" be developed and

submitted to the court. Hence, petitioners' objection to the court's order is misplaced.[4]

3. Petitioners also contest (Pet. 30–34) the determination that their complaint in intervention was moot in light of intervening changes in the challenged HEW policies concerning magnet schools. These changes occurred after the presentation of evidence at trial had been completed but before the district court rendered its decision. The district court (Pet. App. A142–A143, A223–A224) and the court of appeals (*id.* at A278 n.7) agreed that these intervening events made petitioners' complaint moot.

Petitioners' contention, which was rejected by both lower courts, involves only the application of well-established principles of mootness to the particular facts of this case and raises no issue warranting review by this Court. To the extent petitioners suggest that a case cannot become moot after trial or that a plenary hearing is necessarily required to determine mootness, the claim is insubstantial. Moreover, sound judicial administration dictated that this peripheral issue raised by way of the complaint in intervention not be

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[4]The cases cited by petitioners (Pet. 28–29) do not aid their position. Those cases address the questions whether inter-district relief is available in the absence of an inter-district violation and whether a court *may* order inter-district relief to redress an inter-district violation, but they do not bear on the separate question whether, as petitioner asserts, a court *must* order inter-district relief once an inter-district violation has been found. As discussed above, the question of mandatory inter-district relief is not presented at this stage of the case.

allowed to delay final disposition of the case once the principal matters in dispute had been resolved.[5]

4. Lastly, petitioners argue (Pet. 34–37) that the court of appeals incorrectly applied The Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. 1988) to deny fees to petitioners and to award fees to the prevailing plaintiffs that sought them in the district court.

On the basis of its decision that the St. Louis public schools were unlawfully segregated and that petitioners' complaint in intervention was moot, the court of appeals held that petitioners were not entitled to attorney's fees. The court thus indicated its conclusion, at least implicitly, that petitioners were not a prevailing party as required by 42 U.S.C. 1988. While we acknowledge that "a person may in some circumstances be a 'prevailing party' without having obtained a favorable 'final judgment following a full trial on the merits' " (*Hanrahan* v. *Hampton*, Nos. 79–912, 79–914 (June 2, 1980), slip op. 3, quoting H.R. Rep. No. 94–1558, 94th Cong., 2d Sess. 7 (1976)), the court of appeals' decision stands only for the proposition that petitioners have not prevailed in this case. No legal issue of general importance is presented, and further review is unwarranted.

With respect to the award to the prevailing plaintiffs, the court of appeals ordered that the district court "determine reasonable attorneys' fees for the

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[5] Of course, petitioners remain free, if still dissatisfied, to file a new lawsuit challenging the current policy with respect to magnet schools.

Liddell group (and for the Caldwell group, if they requested them)" (Pet. App. A276). Petitioners' objection that fees were granted to the Caldwell group (including the NAACP) "when it was doubtful whether any had been requested" (Pet. 36) is therefore expressly answered by the court's directive. Furthermore, since the only basis for the district court's denial of fees to the Caldwell group was its adverse decision on the merits of the litigation, and since that decision was reversed on appeal in favor of the Caldwell group's substantive position, it was not error for the court of appeals to order that fees be awarded on remand even though the Caldwell group had not taken a separate appeal from the district court's initial disallowance of attorney's fees.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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BRIAN K. LANDSBERG
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JULY 1980

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Cause No. 72-100-C (C)

CRATON LIDDELL, ET AL., PLAINTIFFS,

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, ET AL., DEFENDANTS.

ORDER
[May 21, 1980]

This cause came to be heard pursuant to the remand, opinion, and order of the United States Court of Appeals for the Eighth Circuit handed down on March 3, 1980. After conferences with all counsel and a hearing on the Desegregation Plan filed by the defendant Board of Education of the City of St. Louis on May 2, 1980, and the Court, having considered the positions and objections of the parties, being duly advised in the premises, with findings of fact and conclusions of law to follow, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. The defendant Board of Education of the City of St. Louis ("Board") shall not discriminate on the basis of race in the operation of its public schools.

2. The proposed plan of school desegregation submitted by the defendant Board on May 2, 1980, amended on May 8, May 12, and May 15, 1980, is

hereby approved, with the modifications required by this Order, for implementation at the commencement of the 1980-81 school year. The Board is ordered to immediately undertake all steps necessary to the smooth and efficient implementation of the plan and shall operate its schools in accordance with the said Desegregation Plan and the further directions contained in this Order. No changes shall be made in the plan without the prior approval of this Court.

3. The defendant Board is hereby directed to keep the Adams school open and operating during the 1980-81 school year as a grade K-8 school. On or before January 1, 1981, the Board shall prepare and submit to the Court a proposal for the future use of the Adams school which includes a cost analysis for any renovation which may be necessary and an evaluation of the efforts necessary to maintain the Adams school as a stably integrated facility.

4. The Board's desegregation budget, as set forth in the Plan, is approved subject to the requirement that continued efforts be made to reduce the actual costs of implementation, but without impairing the quality of the Plan's components.

5. With respect to that part of the desegregation budget pertaining to pupil transportation costs, the Board and the State defendants are directed to investigate further ways to reduce the actual costs of pupil transportation and report to the Court on these efforts by June 16, 1980, with due regard being given to the safety of the children and the quality of service.

6. The defendant Board is authorized and directed to transfer the sum of $4,668,000 from its debt retire-

ment account to the building and renovation account to be applied to such building modifications as are needed to expand the magnet schools and achieve the conversion to the grade configuration described in the Desegregation Plan.

7. The State of Missouri is ordered to fund one-half of the cost of implementing and operating the Board's Desegregation Plan; in no event shall the State be required to pay more than $11,076,206 which is one-half of the Desegregation budget herein approved by the Court for the school year 1980–1981. In the subsequent years, as long as the Plan remains in effect, the State shall pay one-half of the cost of desegregation, subject to such adjustments as the Court may deem necessary or proper. The sum ordered to be paid herein will include the additional dollars for transportation requested in the Desegregation budget. Payments shall be made in four equal installments at the same time as regular payments. No payment by the State for this purpose shall be made from the school Foundation Program. Any amounts overpaid will be refunded to the State or credited on the next payment. Payment by the State to the Board of Education of the City of St. Louis for the costs of the Desegregation Plan shall be in addition to the payments heretofore made by the State to the said Board, as well as any increase in those sums as the Board would have received absent this Order. The State is directed to report to the Court by July 1, 1980, the amount of funds available and when they will be paid.

8. The defendant Board is applying to the United States Department of Education for funds under

ESAA which will be used to offset the cost of certain components of the Desegregation Plan. The said Department of Education is required and urged to expedite the processing of these applications of the Board in order to assist the Board in complying with the mandate of the Eighth Circuit and the requirement therein stated that the Plan be implemented no later than the beginning of the 1980–81 school year. The Department is requested to report about its action hereunder by July 1, 1980.

9. The defendant Board shall continue the study of the feasibility of curriculum improvements to improve the quality of education throughout the system.

10. The defendant Board shall continue to study and evaluate the compensatory and remedial educational programs described in the Desegregation Plan and shall recommend for approval by the Court such modifications and improvements as will appear advisable and proper to achieve the goals stated by the appellate court.

11. No inter or intra-district permissive transfer shall be permitted which will increase the segregated nature of either the sending or receiving school.

12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:

a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980–81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school

segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by July 1, 1980.

b) To develop and submit to the Court by November 1, 1980, a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in the 1981-82 school year.

c) To develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

d) To develop and submit to the Court by November 1, 1980, in conjunction with the Community Development Agency of the City of St. Louis, a suggested plan for insuring that the operation of federally-assisted housing programs in the St. Louis metropolitan area will facilitate the school desegregation ordered herein.

e) To develop and submit a plan to the Court by July 1, 1980, which expands programs and schools so that all the schools in the City of St. Louis may be eligible for Title I funding for the year 1980-81 under Title I of the U.S. Elementary and Secondary Education Act of 1965.

13. The defendant Board shall assign its faculty and staff in accordance with the following provisions:

All principals, teachers, and other certificated staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for black students or white students. Commencing with the 1980–81 school year, and continuing yearly thereafter for the period inclusive of 1984–1985, the Board shall assign the staff described above so that the ratio of black to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system. For the purpose of this provision, "substantially the same" means within plus or minus five percentage points of the respective ratio in the entire school system or two individuals, whichever is more.

The same criteria shall apply to non-certificated personnel.

The Board shall, to the extent necessary to carry out its Desegregation Plan, direct members of its staff, as a condition of continued employment, to accept new assignments.

14. On October 30, 1980, on March 31, 1981, and on the same dates annually thereafter until further order of the Court, the Board shall file with the Court a report setting forth the following information:

(a)(i) The number of students by race enrolled in the school district;

(ii) The number of students by race enrolled in each school of the district;

(iii) The number of students by race enrolled in each classroom in each of the schools in the district as well as the race of the teacher in each such classroom.

(b)(i) The number of full-time teachers by race in the district;

(ii) The number of full-time teachers by race in each school in the district;

(iii) The number of part-time teachers by race in the district;

(iv) The number of part-time teachers by race in each school in the district.

(c) Descriptions of the requests and the results which have accrued, by race, under the majority to the minority transfer provisions which is a part of the Plan.

(d) Statement of the number of permissive transfers granted since the Plan became effective, the race of the students who were granted such transfers, and the school district to which the transfers were allowed.

(e) Brief description of any present or proposed construction or expansion of facilities.

(f) Statement whether the Board has sold or abandoned any school facility, equipment, or supplies having a total value of more than $500.00 since the Plan became effective.

15. All construction of new schools, additions to old schools, closing of existing schools, sales or leases, shall be submitted to this Court with notice given to all

parties, and shall not be carried out without prior approval of this Court.

16. A broadly based Monitoring Committee of citizens residing in the City of St. Louis will be appointed by the Court to assist in the implementation of the Desegregation Plan, providing an ongoing review, reporting all the aspects of the Plan, identifying aspects requiring special attention and making recommendations to the Board with regard to any such matter. The Monitoring Committee will have full access to the Board and to the Court and shall report to the Court on a regular basis.

17. Dr. Gary Orfield, who has assisted so well this Court in connection with the Desegregation Plan, shall continue to assist this Court as its expert with regard to the implementation phase and further will provide assistance to the Monitoring Committee and to the parties particularly in connection with the plan of inter-district cooperation and the development of a vocational program for city and county combined. The expenses and fees for these services shall be paid one-half by the State and one-half by the Board.

18. Defendant Board shall seek the assistance of civic groups, including business, labor, religious, and parents' groups, in informing the community of the essential facets of the Desegregation Plan and enlisting the maximum public support of all sections of the community to insure a smooth and effective operation of the Plan. All persons concerned shall be guided by the consideration that the widest acceptance by the community is essential to the success of the Plan.

19. The Court will not grant any stay of this Order.

20. The Court retains jurisdiction of this action to ensure that the provisions of this Order are effectively being carried out.

Dated this 21st day of May, 1980.

/s/ _____

JAMES H. MEREDITH
United States District Judge

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Supreme Court, U.S.
FILED
JUL 28 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1752

JANICE ADAMS, et al.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA, et al.,

Respondents.

REPLY TO BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI To The United States Court of Appeals for the Eighth Circuit

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A R G U M E N T

The Respondent, Board of Education of the City of St. Louis, has filed no brief in opposition to the Petition for Writ of Certiorari and thus does not oppose the granting of the writ. The only opposition to the Petition for Writ comes from Respondent, United States. In arguing that this case presents no new issue of significance, the United States takes the position that the Eighth Circuit Court of Appeals made a fact finding determination that the desegregation plan of Respondent, Board of Education of the City of St. Louis, adopted in 1954 was not effective. It justifies the test to determine the effectiveness of the desegregation plan used by the Court of Appeals by claiming that the Board kept no records concerning race between 1954 and 1962. (Brief of the United States in Opposition, page 6.) It further quotes the Court of Appeals as saying, "All the avail-

able data demonstrates that little desegregation actually occurred in 1954-1956." (Brief of the United States in Opposition, page 7.)

If the Court of Appeals had examined "all the available data," it would have determined that in 1954-56, there was almost universal racial mixture in the schools, which racial mixture appears to be required by the Eighth Circuit's opinion in order to effect desegregation. A reading of the deposition of James Armstrong Scott, the individual who devised and prepared the desegregation plan, discloses that subsequent to the 1954 plan, there were few, if any, uniracial schools. Testimony was available from a number of individuals who testified that subsequent to the implementation of the plan, a significant number of pre-1954 uniracial schools housed multiracial student bodies. (Tr. 182-183; 1219; 3045-3096; and 5609.) Additionally the

housing statistics from the Public Housing Authority of the City of St. Louis disclose significant racial mixtures in the public housing projects between 1954 and 1962. (Pl. Exhibit A-24 and Exhibit N-169(c).) An examination of the racial composition of the inhabitants of the Public Housing Authority and the attendance boundaries which were drawn by Mr. Scott and exhibited in Plaintiff's Exhibit A-22 discloses significant racial mixture in the various schools serving the public housing projects.

The question of the effectiveness of the 1954-56 plan was resolved in 1963 in two suits between the Board of Education and the NAACP. (Plaintiff's Exhibits A-28 and A-29.) The clear record of this case discloses that prior to 1962 the attendance boundaries effectively desegregated the schools. The 1963 desegregation suit was dismissed voluntarily by all parties

because whatever remnant of the segregation that might have existed had been terminated by action of the Board in 1963.

Thus, for the Court of Appeals to have compared the 1954 and 1962 racial composition of the schools constituted the creation of a new test, and in the situation of the schools within the City of St. Louis, represented an erroneous test. Since data was available to examine the racial composition of schools in 1955-56, the use of 1962 data represents a new test used by the Circuit Court.

For the Court's convenience and assistance in this record, under Rule 13 of this Court, the Petitioners have requested that pertinent portions of the record before the Court of Appeals be certified.

Respondent, United States, also argues the issue of mootness by referring in general terms to the ultimate conclusion of both the District Court and the Court of

Appeals. Under Federal Rule of Procedure 52(a), neither the District Court nor the Court of Appeals cited or referred to any documentation or evidence to support the decision and determination of mootness. In the absence of any such determination, which is mandated by the Federal Rules, the decision of the District Court, affirmed by the Court of Appeals, in not supportable.

> ". . . The findings of fact must include as much of the subsidiary facts as necessary to disclose to the reviewing court the steps by which the trial court reached its ultimate conclusion on each factual issue." 9 Wright & Miller, Federal Practice & Procedure §2579.

Your Petitioners therefore respectfully request that the Petition for Writ of Certiorari be granted and that the writ issue.

Respectfully submitted,

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Attorney for Petitioners

CERTIFICATION OF SERVICE

I hereby certify that three (3) copies of the above and foregoing Reply to Brief of Respondents in Opposition to Petition for Writ of Certiorari has been served upon all parties hereto by depositing the same in the United States mail this 25th day of July, 1980, addressed as follows:

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Attorney for the United States

I further certify that a copy has also been served upon the following attorneys, who represented parties in the consolidated appeal before the Eighth Circuit Court of Appeals, and which attorneys may have an interest in this Petition, by depositing the same, postage prepaid, in the United States mail this 25th day of July, 1980.

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